

Deposition of Mary Jackson, 2/3/2004

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE CENTRAL DISTRICT OF CALIFORNIA 3 SOUTHERN DIVISION 4 LIFETIME PRODUCTS, INC., a Utah corporation, 5 Civil No. 02-350 GLT (ANx) 6 Plaintiff, 7 vs. 8 ALTON INDUSTRIES, INC. and 9 MAXCHIEF INVESTMENTS, LTD., 10 Defendants.</p> <hr/> <p>11 DEPOSITION OF MARY JACKSON</p> <hr/> <p>12 TAKEN AT: WORKMAN NYDEGGER 13 60 East South Temple, Suite 1100 14 Salt Lake City, Utah 84101 15 DATE: February 3, 2004 16 TIME: 8:57 a.m. 17 REPORTER: DAWN M. DAVIS, RPR 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 Witness Page 3 MARY JACKSON 4 Examination by Mr. Kressin ..... 5 5 Examination by Mr. Sears..... 196 6 Further Examination by Mr. Kressin ... 202 7 8 EXHIBITS 9 Number Page 10 313 Memo to Glenn Merrill dated 4/6/95 95 11 862 Memo to Vince dated 5/4/95 103 12 863 Quote 107 13 864 Memo to Mary dated 5/24/95 106 14 866 Letter to Deanne Witt dated 1/28/97 131 15 867 Trip report dated 1/29/97 144 16 868 Letter to Rick Noegel dated 10/28/96 122 17 869 Memo to Scott Hines dated 4/1/97 154 18 873 Vendor Agreement (basic) 187 19 880-A Diagram 76 20 881 Price List 80 21 882 Letter to Steve Wohlwend dated 8/10/95 111 22 883 Letter to Michael Day dated 8/11/95 112 23 884 Worksheet only 127 24 885 Memo to Vince Rhoton re 4/30 meeting 129 25 886 Handwritten note dated 4/12/97 128</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES 2 3 For the Plaintiff: 4 LARRY LAYCOCK 5 REX L. SEARS 6 WORKMAN NYDEGGER 7 60 East South Temple, Suite 1000 8 1000 Eagle Gate Tower 9 Salt Lake City, Utah 84111 10 11 For the Defendants: 12 MARK P. CROCKETT 13 GEOFFREY D. KRESSIN 14 LUEDEKA, NEELY AND GRAHAM 15 1871 Riverview Tower, P.O. Box 1781 16 Knoxville, TN 37901-1871 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 887 Memo to Rick Noegel dated 10/17/97 180 2 888 Declaration of Michael Long 193 3 889 Vendor Agreement (basic) 115 4 890 Email to Vince Rhoton dated 10/7/96 117 5 891 Letter to Rick Noegel dated 10/28/96 122 6 892 Letter to Rick Noegel dated 10/31/96 127 7 893 Email to Vince Rhoton dated 1/28/97 143 8 894 Fax transaction sheets 174 9 895 Handwritten note dated 7/16/97 180 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>



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<p>1 Deposition of Mary Jackson 2 February 3, 2004 3 PROCEEDINGS 4 Mary Jackson, called as a witness for 5 and on behalf of the Defendants, being first duly 6 sworn, was examined and testified as follows: 7 EXAMINATION 8 BY-MR.KRESSIN: 9 Q. Would you state your name, please. 10 A. Mary Marjorie Jackson. 11 Q. I think it's Mrs. Jackson? 12 A. Yes. 13 Q. Okay. Mrs. Jackson, my name is Geoff 14 Kressin and I am attorney with the firm of 15 Luedeka, Neely and Graham out of Knoxville, 16 Tennessee. We represent Alton Industries and 17 Maxchief in some litigation initiated by Lifetime 18 Industries. 19 I think we met just a few minutes ago 20 for the first time. Is that correct? 21 A. Yes. 22 Q. Okay. If I should ask you a question 23 and you don't hear it, don't understand it, tell 24 me and I'll speak up or rephrase it. If you 25 respond, I will assume you've understood the</p>	<p>1 please. 2 A. My previous name is Mary Marjorie 3 Derheim. 4 Q. Could you spell Derheim for us? 5 A. D-e-r-h-e-i-m. 6 Q. Okay. 7 A. And my name previous to that is, my 8 maiden name is Poetzel, P-o-e-t-z-e-l. 9 Q. Okay. Do you recall—pardon me—do you 10 recall what time frame you were known as Mary 11 Marjorie Derheim? 12 A. From 19—June of 1987 to September of 13 '90—no, I said that wrong. June of '87 to 14 September of '97. 15 Q. Okay. And is it a fair statement, 16 then, September, '97 to the present you went by 17 Mary Marjorie Jackson—or are going by Mary 18 Marjorie Jackson? 19 A. Actually, that's incorrect. I kept 20 Derheim until I got remarried, which was July of 21 '01. 22 Q. Okay. So you were known as Mary 23 Derheim through July of '01? 24 A. Yeah. 25 Q. Okay. And then in July of '01 you</p>
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<p>1 question. Is that fair enough? 2 A. Yes. 3 Q. Okay. Have you ever given a deposition 4 before? 5 A. Probably 12 years ago. 6 Q. Okay. Do you understand what it is? 7 It's an opportunity for us to ask questions about 8 what knowledge you might have about facts 9 involving this case. 10 A. Uh-huh. 11 Q. It's like sworn testimony that you 12 would give in court. Again, if, if you don't 13 understand the question, please let me know 14 because I just need to know— 15 A. Okay. 16 Q. —whether you understand, otherwise it 17 doesn't do us, either one, any good, right? 18 A. Right. 19 Q. Ms. Jackson, let me just briefly—while 20 we were sitting here for a couple of minutes you 21 indicated that you had been known by some other 22 names in addition to Mary Marjorie Jackson. Is 23 that right? 24 A. Yes. 25 Q. Would you tell us what those names are,</p>	<p>1 married and became Jackson? 2 A. Correct. 3 Q. Okay. And you are presently a Jackson? 4 A. Yes. 5 Q. And were you Mary Marjorie Poetzel? 6 A. Yeah, Poetzel. 7 Q. Poetzel. Until June of 1987? 8 A. Right. 9 Q. Okay. Could you just tell me briefly 10 what your educational background is, please. 11 A. I have two years of merchandising at a 12 community college beyond high school. 13 Q. Okay. Did you graduate from high 14 school? 15 A. Yes. 16 Q. And when did you graduate from high 17 school? 18 A. 1985. 19 Q. Okay. And did you immediately take the 20 two years of merchandising following high school? 21 A. Off and on for the three years after 22 that. 23 Q. Okay. So roughly from '85 to '88? 24 A. Yeah. 25 Q. You said it was at a community college?</p>



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<p style="text-align: right;">Page 9</p> <p>1 A. Yeah, Bellview Community College.</p> <p>2 Q. Is that in Washington state?</p> <p>3 A. Yes, Washington.</p> <p>4 Q. Do you have any other formal education?</p> <p>5 A. No.</p> <p>6 Q. Up until the time you graduated from</p> <p>7 high school did you, during high school and so</p> <p>8 forth, what jobs you had, were they kind of the</p> <p>9 usual jobs that high school students would have?</p> <p>10 A. I started working at Costco in 1984,</p> <p>11 which that was pretty unusual. My other friends</p> <p>12 were working at fast food places and that type of</p> <p>13 work.</p> <p>14 Q. What did you, what job responsibilities</p> <p>15 did you have when you began working for Costco?</p> <p>16 A. For six months I was a cashier and then</p> <p>17 after that I moved into the Central Buying Office.</p> <p>18 Q. Okay. And so when, what time frame did</p> <p>19 you move into the Central Buying Office?</p> <p>20 A. I was there from, I think it was April</p> <p>21 of '85 and then I left in January of 1994.</p> <p>22 Q. Okay. Now, on occasion we've seen</p> <p>23 Costco and PriceCostco.</p> <p>24 A. Uh-huh.</p> <p>25 Q. For our purposes, are those essentially</p>	<p style="text-align: right;">Page 11</p> <p>1 A. No, that was verbal.</p> <p>2 Q. Did Costco--strike that.</p> <p>3 Did you tell Costco that you were going</p> <p>4 to work with Frontier Northwest?</p> <p>5 A. Yes.</p> <p>6 Q. And did you tell them that, that as</p> <p>7 part of those--that job responsibility you had</p> <p>8 intention of, of trying to sell goods to Costco?</p> <p>9 A. Yeah.</p> <p>10 Q. When you went to work in the buying</p> <p>11 office at Costco were you required to sign or</p> <p>12 agree to any employment terms?</p> <p>13 A. Yes.</p> <p>14 Q. Was that a written agreement?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have a copy of that written</p> <p>17 agreement? Not with you today necessarily but--</p> <p>18 A. No.</p> <p>19 Q. --do you have a copy somewhere?</p> <p>20 A. I don't think I do.</p> <p>21 Q. And did it have this six-month</p> <p>22 provision in it?</p> <p>23 A. No.</p> <p>24 Q. Okay. Were there any restrictions on</p> <p>25 your employment if you terminated your employment</p>
<p style="text-align: right;">Page 10</p> <p>1 the same company</p> <p>2 MR. SEARS: Objection, vague.</p> <p>3 Objection, lacks foundation.</p> <p>4 THE WITNESS: Costco and Price Club</p> <p>5 merged in 1994. And then the names went back and</p> <p>6 forth. Now it's back to Costco.</p> <p>7 Q. Okay. In 1994, then, or January of</p> <p>8 1994, is that when you left Costco.</p> <p>9 A. Yes.</p> <p>10 Q. And where did you go from there?</p> <p>11 A. I went to work for Frontier Northwest.</p> <p>12 Q. Would that have been in January of '94?</p> <p>13 A. Yes.</p> <p>14 Q. Pardon me. What, what responsibilities</p> <p>15 did you have when you went to Frontier Northwest?</p> <p>16 A. The first six months I was mainly doing</p> <p>17 secretarial-type work.</p> <p>18 And then after that point I was able to</p> <p>19 be a sales representative back to Costco.</p> <p>20 Q. Was there some reason that you had that</p> <p>21 six-month period that you had to wait?</p> <p>22 A. That was an agreement I had with Costco</p> <p>23 when I left the buying office, that I would take</p> <p>24 a break.</p> <p>25 Q. Was that, was that a written agreement?</p>	<p style="text-align: right;">Page 12</p> <p>1 with Costco? In other words, were there any</p> <p>2 restrictions on any subsequent employment after</p> <p>3 Costco?</p> <p>4 A. No.</p> <p>5 Q. Okay. I think you said you went to</p> <p>6 work, then, at Frontier Northwest in January of</p> <p>7 '94 and worked as, essentially secretarial duties</p> <p>8 for six months?</p> <p>9 A. Yes.</p> <p>10 Q. And then became a sales representative?</p> <p>11 A. Yes.</p> <p>12 Q. So would that have been around July of</p> <p>13 '94?</p> <p>14 A. Yes.</p> <p>15 Q. And as a sales representative, is that</p> <p>16 the job you presently hold?</p> <p>17 A. Yes, it is.</p> <p>18 Q. Now, based on some information that we</p> <p>19 have from Mr. Wohlwend yesterday, he indicated</p> <p>20 there may have been at various times two or three</p> <p>21 different Frontier Northwest entities or at least</p> <p>22 organizations or names or what have you. Are you</p> <p>23 aware that there were different entities known as</p> <p>24 Frontier Northwest?</p> <p>25 A. Yes.</p>



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<p style="text-align: right;">Page 13</p> <p>1 Q. Okay.</p> <p>2 MR. SEARS: Objection. Assumes facts</p> <p>3 not in evidence.</p> <p>4 BY MR. KRESSIN:</p> <p>5 Q. The Frontier Northwest that's presently</p> <p>6 in existence, okay, is that a separate entity or</p> <p>7 corporation?</p> <p>8 MR. SEARS: Objection, vague. Separate</p> <p>9 from what?</p> <p>10 BY MR. KRESSIN:</p> <p>11 Q. Is it an entity? Is it a corporation?</p> <p>12 A. Yes, it is.</p> <p>13 Q. Okay. And who are the shareholders in</p> <p>14 Frontier Northwest as of today?</p> <p>15 A. Myself, Dan Stivers, and Mark McCollum.</p> <p>16 Q. Okay. Now, when did Frontier Northwest</p> <p>17 become a corporation that was owned by the three</p> <p>18 of you all?</p> <p>19 A. I want to say I think it was the 24th</p> <p>20 of last month. It's only been a couple weeks.</p> <p>21 Q. Okay. Last month being January?</p> <p>22 A. January.</p> <p>23 Q. Of 2004?</p> <p>24 A. Right.</p> <p>25 Q. Now, prior to that was there some other</p>	<p style="text-align: right;">Page 15</p> <p>1 A. Yes.</p> <p>2 Q. And was Frontier Group the sole</p> <p>3 shareholder, stockholder of Frontier Northwest?</p> <p>4 A. Yes.</p> <p>5 Q. And who were the principles in Frontier</p> <p>6 Group?</p> <p>7 A. Just one, Steve Wohlwend.</p> <p>8 Q. Okay.</p> <p>9 MR. SEARS: Counsel, could I just ask</p> <p>10 for clarification on one thing? Ms. Jackson is</p> <p>11 appearing both as A representative for Frontier</p> <p>12 Northwest and in her individual capacity. The</p> <p>13 topics that you have just been covering are not</p> <p>14 covered in the notice to Frontier Northwest so</p> <p>15 it's my understanding that you are asking for Ms.</p> <p>16 Jackson's personal understanding.</p> <p>17 MR. KRESSIN: That's fine.</p> <p>18 BY MR. KRESSIN:</p> <p>19 Q. When you went to work at Costco in 1984</p> <p>20 you said you started as a cashier. Is that</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And were, were you hired as a cashier</p> <p>24 or was that a starting point to move into the</p> <p>25 Central Buying Office?</p>
<p style="text-align: right;">Page 14</p> <p>1 organization or an organization known as Frontier</p> <p>2 Northwest?</p> <p>3 A. Some spelling of that. I don't know if</p> <p>4 it was N.W. or Northwest spelled out.</p> <p>5 Q. Okay. Is that the entity that you went</p> <p>6 to work for back in January of '94?</p> <p>7 A. I don't know what he technically called</p> <p>8 it in '94.</p> <p>9 Q. Okay. And just to keep the record</p> <p>10 straight, who is he?</p> <p>11 A. Steve Wohlwend.</p> <p>12 Q. Okay. Well, in, in the time frame of,</p> <p>13 say, between January of 1994 up to January of</p> <p>14 2004 was there a Frontier Northwest other than</p> <p>15 this entity that came into existence in January of</p> <p>16 2004?</p> <p>17 A. There was also a Frontier Group.</p> <p>18 Q. Okay. And what was the relationship,</p> <p>19 if any, between Frontier Group and Frontier</p> <p>20 Northwest?</p> <p>21 A. Frontier Group was the parent—is or</p> <p>22 was the parent company of Frontier Northwest.</p> <p>23 Q. Okay. Do you know if Frontier</p> <p>24 Northwest, when it was owned by Frontier Group,</p> <p>25 was it a corporate entity?</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. SEARS: Objection. Assumes facts</p> <p>2 not in evidence. Compound.</p> <p>3 THE WITNESS: I was hired as a cashier.</p> <p>4 BY MR. KRESSIN:</p> <p>5 Q. Okay. And did you receive any training</p> <p>6 as cashier?</p> <p>7 A. Yes.</p> <p>8 Q. What kind of training did you receive?</p> <p>9 A. How to work a ten-key cash register,</p> <p>10 counting money. Understanding the Costco system</p> <p>11 of item numbers and packs of product.</p> <p>12 Q. I'm sorry, I didn't understand.</p> <p>13 A. Multiple packs of product.</p> <p>14 Q. Oh, okay.</p> <p>15 And then I think you—again as a</p> <p>16 cashier, is that someone like we would see if we</p> <p>17 wanted to buy something at a retail store, that</p> <p>18 kind of cashier?</p> <p>19 A. Yes.</p> <p>20 Q. When you went or moved into the Central</p> <p>21 Buying Office what brought that move about?</p> <p>22 A. There was a job posting at my store</p> <p>23 in—that I worked for positions in the buying</p> <p>24 office and I applied for one of them.</p> <p>25 Q. Okay. Where was the—or it—where was</p>



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<p>1 the buying office that you were seeking 2 employment? 3 A. Seattle. 4 Q. So you applied for the job? 5 A. Yes. 6 Q. And you were successful? 7 A. I didn't receive the job I was applying 8 for but they found something more appropriate for 9 me. 10 Q. Okay. And is that how you ended up in 11 the Central Buying Office? 12 A. Yes. 13 Q. Okay. Did you receive any training 14 when you moved to the Central Buying Office? 15 A. Yes. 16 Q. And what training did you receive? 17 A. Issuing purchase orders, mathematical 18 equations for markups and freight analysis. 19 Q. Okay. And freight analysis? 20 A. Yes. 21 Q. Okay. And anything else? 22 A. I could write a book. 23 Q. Pardon? 24 A. I could write a book. 25 Q. Okay. I was just simply talking about</p>	<p>1 that. 2 MR. SEARS: All right. In that case I 3 am concerned that Ms. Jackson might trespass on an 4 obligation that she owes to Costco. 5 MR. KRESSIN: Well, I asked her about 6 her agreement and if there was any conditions and 7 she said there weren't. 8 MR. SEARS: The fact that it's not 9 embodied in a written agreement does not 10 necessarily mean that there is no trade secret 11 implication. 12 MR. KRESSIN: Well, are you going to 13 instruct her not to answer? 14 MR. SEARS: I am going to express to 15 Miss Jackson my concern that it may trespass on 16 obligations that you owe to Costco if you provide 17 the information that's being requested and that it 18 would be imprudent to trespass on any obligations 19 that you owe to Costco. 20 MR. KRESSIN: Are you instructing her 21 not to answer? 22 MR. SEARS: I've given what I am going 23 to give. 24 MR. KRESSIN: Okay. Is the math-- 25 MR. SEARS: And I would suggest,</p>
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<p>1 the training that you received, the initial 2 training. 3 A. Relationship with vendors, phone 4 communication instruction, filing techniques. 5 Those are some of the basics. 6 Q. Okay. Now, when you say issuing 7 purchase orders, what, what does that entail? 8 A. Initially monitoring inventory levels 9 at the stores and making sure that product was 10 delivered on time to make--to keep the levels at 11 where they needed to be. 12 Q. Okay. And then is the math for the 13 markups, is that a, is that an equation that 14 Costco has developed? 15 A. I believe it's a standard equation for 16 all of retailing. 17 Q. What is the, what is that equation? 18 A. It's 19 MR. SEARS: If I, I just want to 20 clarify one thing. The witness has testified that 21 she, it's her belief that it's industry-wide. To 22 the extent that it's not industry-wide it may be 23 proprietary Costco information. If you are 24 confident that it is industry-wide-- 25 THE WITNESS: I am not positive of</p>	<p>1 Counsel, that there is no reason to put Miss 2 Jackson in that sort of a position. 3 MR. KRESSIN: Well, it--she said that 4 this was a general equation, it wasn't anything, 5 you know, special until, you know, you started 6 telling her. 7 MR. SEARS: No, she said she thought it 8 was a general equation. 9 MR. LAYCOCK: Let's go off the record, 10 if we might, for just a moment and discuss this 11 off the record. 12 (Discussion off the record.) 13 BY MR. KRESSIN: 14 Q. Now, before we went off the record I 15 simply asked the question about some mathematical 16 equation or algorithm that you all used at Costco 17 and initially I think your comment was that you 18 thought it was, it was a common markup, it wasn't 19 anything secret about it. Has-- 20 MR. SEARS: I'll object to the 21 narrative to the extent that it misstates Ms. 22 Jackson's testimony. 23 BY MR. KRESSIN: 24 Q. Have you reconsidered that issue? 25 A. Yes.</p>



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<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. And what, what makes you think 2 that there is something proprietary about it? 3 MR. SEARS: Objection, relevance. 4 BY MR. CRESSON: 5 Q. Go ahead. 6 A. What I was trained to do at Costco is-- 7 from everything I've understood, now that I'm in 8 other areas of retailing, they do it different 9 than other retailers do, their markups, their 10 profit and loss statements, things like that. 11 Q. Okay. Were you advised when you worked 12 there that this, however they mark things up or 13 however they decide on their pricing was a 14 confidential equation or formula? 15 A. Yes. 16 Q. And when were you advised of that? 17 A. When I was first trained in '85. 18 Q. Okay. And who, who advised you of 19 that? 20 A. The first person who trained me, her 21 name was Carolyn Sakai. 22 Q. Carolyn Sakai? 23 A. S-a-k-a-i. 24 Q. Okay. And was, was the fact that this 25 equation or formula, that it was, it was</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. Okay. What--when, when you first went 2 to work in 1984 what instruction or training did 3 you have with regard to dealing with vendors? 4 A. How to-- 5 MR. SEARS: Objection, vague. Are you 6 talking about as a cashier or the buying? 7 BY MR. KRESSIN: 8 Q. I'm sorry. When you first went to work 9 in the buying department. 10 A. When I first went there I was given 11 questionnaires that needed to be filled out, 12 things like weight of the product, dimensions, 13 information in order to fill out their, the forms 14 that they had. 15 Q. Okay. And when you say "they," you 16 mean Costco forms? 17 A. Costco. 18 Q. Okay. Did you have any, any 19 relationship with the vendors when you first went 20 to the buying department? 21 A. No. 22 Q. When did you first--or if at all did-- 23 let me start again. 24 Did you at any time ever have a 25 responsibility of dealing with vendors when you</p>
<p style="text-align: right;">Page 22</p> <p>1 confidential, was that made part of a writing 2 anywhere? Is there any written, anything in 3 writing that, that says that this is confidential? 4 A. Only that the documents that we would 5 write the equation on never left Costco's 6 facility. 7 Q. Okay. 8 A. It was not public knowledge. 9 Q. Okay. How did you learn of this 10 markup? The formula, excuse me. 11 A. From Carolyn. 12 Q. Do you know where she learned it? 13 MR. SEARS: Objection. Lacks 14 foundation. Calls for speculation. 15 BY MR. KRESSIN: 16 Q. Okay. Go ahead and answer. 17 A. I don't know where she learned it. 18 Q. Okay. Now, I think you, if I wrote my 19 note down right, you also learned how to deal 20 with vendors or how to--what kind relationship you 21 in, as a person in the buying department should 22 have with vendors. 23 A. Yes. 24 Q. Is that a fair statement? 25 A. Yes.</p>	<p style="text-align: right;">Page 24</p> <p>1 were in the buying department at Costco? 2 A. Yes, and it was when I became an 3 assistant buyer in . . . I believe that was 1990. 4 Q. 1990? 5 A. Yes. 6 Q. Okay. Prior to that time, though, you 7 did not have any, any relationship--strike that. 8 Prior to 1990 you didn't have any 9 responsibilities as a buyer? 10 A. Correct. 11 Q. Do you remember what, what part of 1990 12 that was? 13 A. I think it was May. 14 Q. May. Was that a promotion? 15 A. Yes. 16 Q. Now, after you became assistant buyer 17 how long did you stay an assistant buyer? 18 A. For three years. 19 Q. Three years. So would that have been 20 until May of 1993? 21 A. Sometime in '93, yes. 22 Q. Okay. And in 1993 did you receive 23 other job responsibilities? 24 A. I was promoted to buyer. 25 Q. Okay. Now, as an assistant buyer what,</p>

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<p style="text-align: right;">Page 25</p> <p>1 what area or products were you buying for?</p> <p>2 A. Sporting goods.</p> <p>3 Q. Sporting goods.</p> <p>4 And what would that have included?</p> <p>5 A. Bicycles, basketball hoops, water</p> <p>6 sports, games.</p> <p>7 Q. I'm sorry, games?</p> <p>8 A. Indoor and outdoor games.</p> <p>9 Q. Okay. Okay. Anything else?</p> <p>10 A. In general those were the categories.</p> <p>11 Q. Okay. Did you maintain that area of</p> <p>12 responsibility during your entire tenure as an</p> <p>13 assistant buyer?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. When you became a buyer did, did</p> <p>16 you continue with sporting goods?</p> <p>17 A. No. I was moved into office supplies.</p> <p>18 Q. Okay. So that would have been in 1993?</p> <p>19 A. Yes.</p> <p>20 Q. Did you stay in office supplies until</p> <p>21 you terminated your employment?</p> <p>22 A. Yes, I did.</p> <p>23 Q. And what did office supplies include.</p> <p>24 A. Pens, copy paper, files, file folders.</p> <p>25 MR. SEARS: Staples, paperclips.</p>	<p style="text-align: right;">Page 27</p> <p>1 MR. SEARS: Objection. Compound.</p> <p>2 Which question do you want her to answer?</p> <p>3 BY MR. KRESSIN:</p> <p>4 Q. Let me say governed your employment</p> <p>5 rather than related or.</p> <p>6 A. There were--no, there were no other</p> <p>7 written agreements.</p> <p>8 Q. Did you have employee handbooks?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did the employee handbooks that</p> <p>11 you had, were they employee handbooks that were</p> <p>12 general handbooks for employees of Costco or were</p> <p>13 they related to your job as a buyer?</p> <p>14 A. They were very general.</p> <p>15 Q. Other than your employment agreement,</p> <p>16 did you have any, any written documents that</p> <p>17 governed your employment in the Buying Department?</p> <p>18 A. No.</p> <p>19 Q. Did you have any code of ethics or</p> <p>20 buyers' code or something that you followed?</p> <p>21 A. Yes.</p> <p>22 Q. And where--how did you come to learn of</p> <p>23 that?</p> <p>24 A. They had it posted on the wall.</p> <p>25 Q. And what, what did it say?</p>
<p style="text-align: right;">Page 26</p> <p>1 THE WITNESS: Yeah. Really boring</p> <p>2 stuff compared to sporting goods.</p> <p>3 BY MR. KRESSIN:</p> <p>4 Q. Did it include any furniture?</p> <p>5 A. No, it did not.</p> <p>6 Q. Okay. When you were an assistant buyer</p> <p>7 who did you report to?</p> <p>8 A. To Carolyn Sakai.</p> <p>9 Q. And when you became a buyer who did you</p> <p>10 report to?</p> <p>11 A. I can't remember his name. Gary</p> <p>12 Ojendyk.</p> <p>13 Q. Okay.</p> <p>14 A. That's a fun one to spell.</p> <p>15 Q. I was going to say, would you spell it?</p> <p>16 A. O-j-e-n-d-y-k.</p> <p>17 Q. Okay. Now, other than--and maybe I may</p> <p>18 be mischaracterizing it, I will tell you before it</p> <p>19 draws an objection. Did you tell me that you did</p> <p>20 have a written employment agreement with Costco?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Other than the written</p> <p>23 employment agreement were there any other</p> <p>24 documents that related to or governed your</p> <p>25 employment with Costco?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Let me see if I can remember. Obey the</p> <p>2 law.</p> <p>3 Q. Okay.</p> <p>4 A. Respect vendors. There were five</p> <p>5 things. Rule of five again. It's been awhile.</p> <p>6 Things on those lines of, of, you know, telling</p> <p>7 the truth. The only, I can only think of three</p> <p>8 for some reason. It's been about ten years since</p> <p>9 I've seen it.</p> <p>10 Q. Do they still have it?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Other than this posting, then,</p> <p>13 is there anything else that's written?</p> <p>14 A. They had a class that all staff members</p> <p>15 from the buying office would go through. They</p> <p>16 call it a merchandising seminar and there was a</p> <p>17 book that went along with that.</p> <p>18 Q. Okay. Did you go through that--</p> <p>19 A. Yes.</p> <p>20 Q. --class?</p> <p>21 And when did you go through the class?</p> <p>22 A. '86.</p> <p>23 Q. Okay. Is, is the class something that</p> <p>24 you, you do every so often or you just do it one</p> <p>25 time?</p>



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Deposition of Mary Jackson, 2/3/2004

<p style="text-align: right;">Page 29</p> <p>1 A. I only did it once and I don't know if 2 they still do it. 3 Q. Okay. Was the book that you mentioned, 4 is that, is that a book that, that's Costco's 5 book? 6 A. Yes, it's their, they printed it. 7 Q. Did you, other than that class, did you 8 have meetings or seminars to, to, to—that 9 addressed issues of dealing with vendors? 10 A. Weekly staff meetings. 11 Q. Okay. What, what, you know, again, not 12 getting into the specifics, but what general 13 topics were covered at those meetings? 14 A. Vendor relations, different ways to 15 increase margins, trying to raise advertising 16 funds, those types of things. 17 Q. Okay. And who attended those meetings? 18 A. Buyers, assistant buyers, assistant 19 general managers and general managers. 20 Q. And these are all people who were 21 employed by Costco? 22 A. Yes. 23 Q. Okay. How did you come about—or tell 24 me how you came to be employed at Frontier 25 Northwest.</p>	<p style="text-align: right;">Page 31</p> <p>1 assistants. 2 Q. Okay. But you had known him when you 3 were an assistant buyer dealing with sporting 4 goods? 5 A. Right. 6 Q. And did he sell sporting goods to 7 Costco or Price Club? 8 A. He sold sporting goods to Costco. 9 Q. So he called you and said he was 10 looking for an assistant. Is that right? 11 A. Yes. 12 Q. Was there any other discussion other 13 than just he called and said he was looking for 14 an assistant? 15 A. He wasn't—he was wanting to know if I 16 could recommend anybody. 17 Q. And did you recommend anyone? 18 A. No. 19 Q. Did you recommend yourself? 20 A. I did. 21 Q. Okay. Did you interview with him? 22 A. Yes. 23 Q. Was anyone else interviewed—strike 24 that. 25 At the time you interviewed with Mr.</p>
<p style="text-align: right;">Page 30</p> <p>1 MR. SEARS: Objection. Vague. 2 THE WITNESS: Steve Wohlwend was 3 looking for some assistants. 4 BY MR. KRESSIN: 5 Q. Okay. Well, obviously from your 6 comment Steve communicated with you. 7 A. Yes. 8 Q. How did it come about that he 9 communicated with you? What did he—how and where 10 did that occur? 11 A. He called me one day, and this was 12 during the Price Club/Costco merger. 13 Q. Okay. And what time frame would that 14 have been that he would have called you? 15 A. It was October of '93. 16 Q. Okay. Did he call you at work? 17 A. Yes. 18 Q. Had you known Mr. Wohlwend prior? 19 A. Yes. 20 Q. And how did you know him? 21 A. When I was an assistant buyer he was 22 one of the sales reps for sporting goods. 23 Q. Okay. Did he ever tell you why he 24 called you? 25 A. Yes, because he was looking for</p>	<p style="text-align: right;">Page 32</p> <p>1 Wohlwend was anyone else present? 2 A. No. 3 Q. Did you tell Costco that you were going 4 to interview with Mr. Wohlwend? 5 A. No. 6 MR. SEARS: Geoff, are you saying 7 Wolwine or Wohlwend? 8 MR. KRESSIN: I think I may have said 9 Wolwine but it's Wohlwend. 10 THE WITNESS: Wohlwend. 11 BY MR. KRESSIN: 12 Q. How many interviews did you have with 13 Mr. Wohlwend? 14 A. One. 15 Q. Did you reach some terms of employment? 16 A. Not initially. He called me back a 17 week later. 18 Q. Okay. And he made you an offer? 19 A. Yes. 20 Q. And you accepted it? 21 A. Yes. 22 Q. Was it after you accepted the offer 23 that you told Costco that you were leaving? 24 A. Yes. 25 Q. Okay. And you had mentioned that you</p>

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<p style="text-align: right;">Page 33</p> <p>1 had some arrangement with them about this six-</p> <p>2 month business?</p> <p>3 A. Right.</p> <p>4 Q. Tell me what that was.</p> <p>5 A. They knew that I would be selling</p> <p>6 product back to Costco and they asked that I not</p> <p>7 physically go to the buying office during that</p> <p>8 first six months period of time.</p> <p>9 Q. Okay. And who was "they"?</p> <p>10 A. My boss, Gary Ojendyk.</p> <p>11 Q. Okay. Were there any other concerns</p> <p>12 expressed?</p> <p>13 A. They did not want me to take any type</p> <p>14 of paperwork with me.</p> <p>15 Q. Anything else?</p> <p>16 A. They did not want me to discuss their</p> <p>17 internal formulas and some of their trade secrets</p> <p>18 of how they do business.</p> <p>19 Q. Okay. And what, what, without telling</p> <p>20 me what the trade secrets are, what categories of</p> <p>21 trade secrets are we talking about?</p> <p>22 A. Where they get their profit from.</p> <p>23 Q. Okay. Anything else?</p> <p>24 A. That's pretty much it.</p> <p>25 (Discussion off the record.)</p>	<p style="text-align: right;">Page 35</p> <p>1 A. Uh-huh. Yes.</p> <p>2 Q. Was that the traditional spelling of</p> <p>3 Tanaka?</p> <p>4 A. Yes.</p> <p>5 Q. And what was, what were his job</p> <p>6 responsibilities?</p> <p>7 A. He was a sales rep to Washington</p> <p>8 accounts and Montana and Alaska.</p> <p>9 Q. Okay. And when we say Washington, we</p> <p>10 are talking about Washington state?</p> <p>11 A. State of Washington.</p> <p>12 Q. Okay. And when you say Washington</p> <p>13 accounts, are you talking about a governmental</p> <p>14 account or just accounts located physically in the</p> <p>15 state of Washington?</p> <p>16 A. Retail accounts that, whose buying</p> <p>17 offices are located in Washington state.</p> <p>18 Q. Okay. Did he, did Mr. Tanaka have any</p> <p>19 dealings with Costco?</p> <p>20 MR. SEARS: Objection. Lacks</p> <p>21 foundation. Calls for speculation.</p> <p>22 BY MR. KRESSIN:</p> <p>23 Q. If you know.</p> <p>24 A. Just in helping with some of the</p> <p>25 meetings where we had large samples, but nothing</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. Okay. Other than profit—I'm sorry,</p> <p>2 other than where profit comes from, was there any</p> <p>3 other categories of trade secrets?</p> <p>4 A. How they select where to build their</p> <p>5 stores.</p> <p>6 Q. Okay. Anything else?</p> <p>7 A. No.</p> <p>8 Q. Pardon?</p> <p>9 A. That's it. No.</p> <p>10 Q. Okay. In January of '94, is that when</p> <p>11 you went to work with Mr. Wohlwend?</p> <p>12 A. Yes.</p> <p>13 Q. And you said you had some, you were</p> <p>14 doing essentially secretarial duties, I think was</p> <p>15 your expression of what your job was. What did</p> <p>16 that include?</p> <p>17 A. He didn't have any type of computer</p> <p>18 system set up at his office at that time so I put</p> <p>19 most of my energy into getting him on-line with</p> <p>20 e-mail and getting file systems put in place.</p> <p>21 Q. Okay. Did anybody else—pardon me—did</p> <p>22 anybody else work at the company when you joined</p> <p>23 in January of '94?</p> <p>24 A. There was one other, Shin Tanaka.</p> <p>25 Q. Tanaka?</p>	<p style="text-align: right;">Page 36</p> <p>1 having to do with negotiations.</p> <p>2 Q. Okay. When you say large samples, you</p> <p>3 mean large numbers of samples or something else?</p> <p>4 A. Physically large.</p> <p>5 Q. Okay. Well, would you consider, for</p> <p>6 example, a utility table a physically large</p> <p>7 sample?</p> <p>8 A. No. Like a 14-foot trampoline.</p> <p>9 Q. Okay. Something that one person</p> <p>10 wouldn't be able to—or one norm person wouldn't</p> <p>11 be able to manage?</p> <p>12 A. Right.</p> <p>13 (Recess taken.)</p> <p>14 Q. When you went to work at Frontier</p> <p>15 Northwest did you receive any training to be a</p> <p>16 sales representative?</p> <p>17 A. Yes.</p> <p>18 Q. And what training did you receive?</p> <p>19 A. Steve instructed me on gathering</p> <p>20 correct information from vendors, who to call for</p> <p>21 information, going over calendar of events to</p> <p>22 expect for the next year. And just general</p> <p>23 vendor correspondence, which was a little bit</p> <p>24 different than what I had at Costco as a buyer.</p> <p>25 Q. Okay. Again, while we are referring to</p>



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<p style="text-align: right;">Page 37</p> <p>1 Steve, we are referring to Mr. Wohlwend?</p> <p>2 A. Yes.</p> <p>3 Q. Other than just the, the information</p> <p>4 that he gave, did you receive any other training?</p> <p>5 A. We had sales meetings once or twice a</p> <p>6 year with each of our vendors and we would be</p> <p>7 instructed on new products and sales techniques,</p> <p>8 but mainly it was learning about new products for</p> <p>9 the coming year.</p> <p>10 Q. Okay. I am a little confused here.</p> <p>11 You had sales meetings one to two times a year,</p> <p>12 did you say with the vendors?</p> <p>13 A. With the vendors, yes.</p> <p>14 Q. Okay. And the purpose of those</p> <p>15 meetings was to bring you up to speed on new</p> <p>16 products--</p> <p>17 A. Yes.</p> <p>18 Q. --that the vendors had?</p> <p>19 A. Yes.</p> <p>20 Q. And then you said something about sales</p> <p>21 techniques?</p> <p>22 A. Sometimes they would try to show us the</p> <p>23 best way to sell a product to different types of</p> <p>24 buyers.</p> <p>25 Q. Okay. Did you ever have any other</p>	<p style="text-align: right;">Page 39</p> <p>1 had with Costco to not be engaged with buyers at</p> <p>2 anyplace or just buyers at Costco?</p> <p>3 A. Just buyers at Costco.</p> <p>4 Q. Okay. So you could, you could meet</p> <p>5 with buyers for other companies?</p> <p>6 A. Yes.</p> <p>7 Q. During the six-month period did you</p> <p>8 meet with buyers at other companies?</p> <p>9 A. Yes. On three occasions I met with REI</p> <p>10 buyers.</p> <p>11 Q. REI?</p> <p>12 A. Yes.</p> <p>13 Q. And does REI stand for something?</p> <p>14 A. Recreational Equipment Incorporated.</p> <p>15 Q. Okay. Where are they located?</p> <p>16 A. Kent, Washington.</p> <p>17 Q. What is their business?</p> <p>18 A. Backpacking, camping, climbing, skiing,</p> <p>19 outdoor.</p> <p>20 Q. Okay. Anyone else?</p> <p>21 A. No.</p> <p>22 Q. How did you learn who to speak with or</p> <p>23 what buyer to deal with at REI?</p> <p>24 A. Through Steve.</p> <p>25 Q. Okay. After your--and, again--let me</p>
<p style="text-align: right;">Page 38</p> <p>1 meetings or instruction on your job as a sales</p> <p>2 representative?</p> <p>3 A. Daily phone calls from vendors. We</p> <p>4 would discuss problems and try to think of</p> <p>5 solutions on how to overcome the problems we had</p> <p>6 with buyers.</p> <p>7 Q. Okay. Now, I used the term sales</p> <p>8 representative. Is this a correct term for your</p> <p>9 job?</p> <p>10 A. Yes.</p> <p>11 Q. Anything else?</p> <p>12 MR. SEARS: Objection. Vague.</p> <p>13 THE WITNESS: I can't think of anything</p> <p>14 else.</p> <p>15 BY MR. KRESSIN:</p> <p>16 Q. Did you ever have any meetings with</p> <p>17 your customers--and maybe that's not the right</p> <p>18 term. Who--what do you call the people you are</p> <p>19 selling to?</p> <p>20 A. Buyers.</p> <p>21 Q. Buyers. Okay.</p> <p>22 Did you have any meetings with buyers?</p> <p>23 A. After my six-month period that I needed</p> <p>24 to wait and then, yes, I would meet with buyers.</p> <p>25 Q. Okay. Did--was the agreement that you</p>	<p style="text-align: right;">Page 40</p> <p>1 back up.</p> <p>2 Was there anyone else during this six-</p> <p>3 month period other than REI that you went to to</p> <p>4 talk to their buyers or talk to the buyers.</p> <p>5 A. No.</p> <p>6 Q. Okay. After the six-month period what,</p> <p>7 what did you do at that point as far as</p> <p>8 contacting buyers and so forth?</p> <p>9 A. I was working with the sporting goods</p> <p>10 buyer and her assistants.</p> <p>11 Q. Okay. Who was the sporting good buyer</p> <p>12 and assistants? Where?</p> <p>13 A. In, they were in Kirkland, Washington.</p> <p>14 Q. I meant what company were they.</p> <p>15 A. Oh, Costco.</p> <p>16 Q. Costco, okay.</p> <p>17 And who was, who was this buyer?</p> <p>18 A. There was Carolyn Sakai and also Leslie</p> <p>19 Watson.</p> <p>20 Q. Okay. And what, what goods were they</p> <p>21 purchasing? You said sporting goods.</p> <p>22 A. I was selling them basketball hoops,</p> <p>23 fitness equipment, bicycles, wooden play centers,</p> <p>24 trampolines, sleeping bags and tents, backpacks.</p> <p>25 Q. Okay. Were any of these products</p>



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<p style="text-align: right;">Page 41</p> <p>1 manufactured by Lifetime?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. What products?</p> <p>4 A. The basketball hoop and at that time</p> <p>5 trampolines.</p> <p>6 Q. Okay. What other, what other buyers</p> <p>7 with what other companies were you, did you start</p> <p>8 dealing with after your six-month period?</p> <p>9 MR. SEARS: To present or do you have</p> <p>10 some specific time period in mind?</p> <p>11 MR. KRESSIN: Well, I was starting with</p> <p>12 that—I was wanting to come forward with it so</p> <p>13 I'm talking about essentially—what is it, July of</p> <p>14 '94.</p> <p>15 THE WITNESS: Okay. Lawn and garden</p> <p>16 buyer. That was Deanne Witt.</p> <p>17 BY MR. KRESSIN:</p> <p>18 Q. D.M. Witt?</p> <p>19 A. Deanne Witt.</p> <p>20 Q. Okay. Excuse me.</p> <p>21 And who is she with?</p> <p>22 A. She is with Costco.</p> <p>23 Q. Okay. Perhaps the easier way to do</p> <p>24 this might be what time frame are we talking</p> <p>25 about that you dealt with the lawn and garden</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. Okay. Anyone else?</p> <p>2 A. No.</p> <p>3 Q. Okay. And as we progress did you deal</p> <p>4 with other departments or other buyers? Let's do</p> <p>5 this. I've said other buyers. Let's first focus</p> <p>6 on buyers at Costco and then we'll talk about</p> <p>7 buyers outside of Costco, okay?</p> <p>8 A. Okay. So as far as—</p> <p>9 Q. Just to keep it clear.</p> <p>10 A. Yeah. My main responsibility at</p> <p>11 Frontier Northwest was to just deal with Costco.</p> <p>12 Q. Okay. Okay. So, again, starting in</p> <p>13 July of '94, you were dealing with lawn and</p> <p>14 garden buyer, Deanna Witt, and you were dealing</p> <p>15 with a hardware buyer, Gianna Bianchi?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And then I think you also said the</p> <p>18 sporting goods buyer, Carolyn Sakai?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Anyone else that you dealt with</p> <p>21 as buyer?</p> <p>22 A. Leslie Watson as well. There were two</p> <p>23 sporting good buyers at—when Price Club and</p> <p>24 Costco came together they made two separate</p> <p>25 sporting good departments.</p>
<p style="text-align: right;">Page 42</p> <p>1 buyer at Costco. And it may be—</p> <p>2 A. Yeah, from July.</p> <p>3 Q. To the present?</p> <p>4 A. Yeah, from that period in July until</p> <p>5 she, she took a different responsibility after a</p> <p>6 couple years.</p> <p>7 Q. Okay. So roughly two years later she—</p> <p>8 A. Yeah.</p> <p>9 Q. Do you still deal with Deanne Witt?</p> <p>10 A. No.</p> <p>11 Q. Do you know what responsibilities she</p> <p>12 took on?</p> <p>13 A. I think she left the company.</p> <p>14 Q. Okay. Okay. And who else? Again</p> <p>15 starting in the '94 time period.</p> <p>16 A. There was a hardware buyer. Her name</p> <p>17 is Gianna Bianchi. Another good name.</p> <p>18 Q. I got cousins named Bianchi so I can</p> <p>19 deal with that one.</p> <p>20 What was her first name?</p> <p>21 A. Was it—I think it was Gianna,</p> <p>22 G-i-a-n-n-a.</p> <p>23 Q. Okay. She was a buyer in—I'm sorry,</p> <p>24 she was a hardware buyer?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Okay. Okay. Anyone else?</p> <p>2 A. Michelle Moen in toys.</p> <p>3 Q. Moen?</p> <p>4 A. M-o-e-n. Yeah.</p> <p>5 Q. Okay. And when did you deal with her?</p> <p>6 A. I think it was about October.</p> <p>7 Q. Of?</p> <p>8 A. Of '94.</p> <p>9 Q. Okay. You still deal with her?</p> <p>10 A. Very rarely.</p> <p>11 Q. Okay. Is she still the buyer in toys?</p> <p>12 A. No. She just got moved last month to</p> <p>13 small electrics, I think.</p> <p>14 Q. Small electric, does that mean small</p> <p>15 electric appliances?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Anyone else?</p> <p>18 A. No.</p> <p>19 Q. Now, are—make sure we are—I'm</p> <p>20 communicating. Are these the people that you've</p> <p>21 dealt with up to the present or were these just</p> <p>22 the people you started dealing with back in '94?</p> <p>23 A. Those are the people I started dealing</p> <p>24 with in '94.</p> <p>25 Q. Okay. Then coming forward, what other</p>



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Deposition of Mary Jackson, 2/3/2004

<p style="text-align: right;">Page 45</p> <p>1 buyers at Costco have you dealt with?</p> <p>2 A. Both of the sporting good buyers</p> <p>3 changed and they were replaced with two gentlemen,</p> <p>4 one is Dave Greek and--</p> <p>5 Q. Is that--</p> <p>6 A. G-r-e-e-k.</p> <p>7 Q. Okay.</p> <p>8 A. --and Nino Garcia, N-i-n-o. Garcia.</p> <p>9 Q. Okay.</p> <p>10 A. And there was also a Shelly Bucklin in-</p> <p>11 between.</p> <p>12 Q. Buckland?</p> <p>13 A. Yeah, B-u-c-k-l-i-n. She was before</p> <p>14 Nino came in.</p> <p>15 Q. Okay. Now, did Dave Greek, Shelly</p> <p>16 Bucklin and Nino Garcia, are those just the three</p> <p>17 buyers in sequence or were they there together at</p> <p>18 some point in time?</p> <p>19 A. I have to think how it went. Carolyn</p> <p>20 went to a different department, so then Shelly</p> <p>21 came in to replace Carolyn.</p> <p>22 Q. Okay.</p> <p>23 A. And then Leslie was replaced by Dave</p> <p>24 and then Shelly was replaced by Nino.</p> <p>25 Q. Okay. I'm with you.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. And she is still there?</p> <p>2 A. And she is still there.</p> <p>3 Q. Okay. And we talked about sporting</p> <p>4 goods. What about your hardware buyer?</p> <p>5 A. I only had one item that I presented</p> <p>6 back when I first started in '94 and I haven't</p> <p>7 had anything since then.</p> <p>8 Q. Okay. So you have had no dealings with</p> <p>9 the hardware people?</p> <p>10 A. Right.</p> <p>11 Q. And were there any other departments,</p> <p>12 now, that--or any other buyers that you deal with</p> <p>13 at Costco?</p> <p>14 A. There was Michelle Moen in toys.</p> <p>15 Q. Right.</p> <p>16 A. Off and on. And any other</p> <p>17 correspondence that I had was mainly from when I</p> <p>18 was a buyer there and knew a lot of the people,</p> <p>19 but I didn't necessarily have anything to sell to</p> <p>20 them.</p> <p>21 Q. Okay. So it was more like Hi, how are</p> <p>22 you, as opposed to business?</p> <p>23 A. Uh-huh.</p> <p>24 Q. We ran across a name the other day in</p> <p>25 some documents that were produced by Dan Stivers,</p>
<p style="text-align: right;">Page 46</p> <p>1 Now, are Dave and Nino still the</p> <p>2 buyers?</p> <p>3 A. Nino is still in his position but Dave</p> <p>4 has moved on to underwear as of last month.</p> <p>5 Q. Okay. Is there any particular rhyme or</p> <p>6 reason where you go from one particular goods to</p> <p>7 another?</p> <p>8 A. No. Apparently the, the general</p> <p>9 managers like to move the buyers around from time</p> <p>10 to time just to keep things interesting for them.</p> <p>11 Q. Okay. Now, what other buyers have you</p> <p>12 dealt with at Costco? Again, coming forward from</p> <p>13 '94.</p> <p>14 A. When, when Deanne Witt left her</p> <p>15 department then we had Karen Langston for maybe</p> <p>16 two years. And then she was replaced by Kim</p> <p>17 Thomas.</p> <p>18 Q. And this would have been in lawn and</p> <p>19 garden?</p> <p>20 A. Yes.</p> <p>21 Q. What time frame, then, are we talking</p> <p>22 about with Karen Langston?</p> <p>23 A. I think she was there from '97 to '99.</p> <p>24 Q. And Kim Thomas picked it up in '99?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 48</p> <p>1 a Klaus Lambert.</p> <p>2 A. Uh-huh.</p> <p>3 Q. Did you--and you'll have to say yes or</p> <p>4 no. She can't pick up head nods.</p> <p>5 A. Okay.</p> <p>6 Q. Did you ever have any dealings with</p> <p>7 Klaus Lambert?</p> <p>8 A. I had a couple discussions with Klaus.</p> <p>9 Q. Do you know what Klaus's</p> <p>10 responsibilities were?</p> <p>11 A. He was responsible for office furniture</p> <p>12 and I believe just home furnishings as well.</p> <p>13 Q. Okay. Do you--when was that?</p> <p>14 MR. SEARS: When was he responsible or</p> <p>15 when was she dealing with him?</p> <p>16 BY MR. KRESSIN:</p> <p>17 Q. Okay. When was he responsible for</p> <p>18 office furniture?</p> <p>19 MR. SEARS: Lacks foundation.</p> <p>20 THE WITNESS: I don't, I don't know</p> <p>21 what his tenure was.</p> <p>22 BY MR. KRESSIN:</p> <p>23 Q. Okay. And what, what--you said you had</p> <p>24 some minor dealings with him?</p> <p>25 A. Yes. I had to--when Lifetime first was</p>



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<p style="text-align: right;">Page 49</p> <p>1 looking into getting into the office furniture  2 category they wanted to know who the buyer was.  3 Q. Now, we had asked and served a  4 subpoena, I believe, asking that, that you produce  5 certain documents and I think we have been advised  6 that there were no other documents other than the  7 documents produced by Mr. Stivers that were going  8 to be produced. Did you understand that?  9 A. Yes.  10 Q. Okay. Were there any documents that  11 were withheld and not produced?  12 A. No.  13 Q. Did you keep any personal notes or  14 records yourself?  15 A. No.  16 Q. You don't have any calendars, anything  17 like that?  18 A. All of my notes were in the files that  19 we went through.  20 Q. Okay. So the answer is to the extent  21 they exist, they have been produced?  22 A. Yes.  23 Q. Is that a fair statement?  24 A. Yes.  25 Q. Now, what, what documents did you</p>	<p style="text-align: right;">Page 51</p> <p>1 you first become aware of it.  2 A. Okay.  3 MR. SEARS: Same objection.  4 THE WITNESS: We had talked about  5 removing the benches from the picnic table in '95,  6 so that would have been the first time that we  7 thought of that concept.  8 BY MR KRESSIN:  9 Q. Okay. And when you say we talked about  10 it, who is we?  11 A. Vince Rhoton. And we discussed it with  12 the buyer, Deanne Witt.  13 Q. Did you discuss it with anyone else  14 other than these two people?  15 A. Steve Wohlwend.  16 Q. Anyone else?  17 A. No.  18 Q. What was the, what was the  19 circumstances of this discussion?  20 A. Deanne wanted us to come up with ideas  21 of making the picnic table different because she  22 had competitive issues with Sam's Club.  23 Q. And did you all discuss those  24 competitive differences?  25 A. Yes.</p>
<p style="text-align: right;">Page 50</p> <p>1 review to prepare, if any, did you review to  2 prepare for this deposition?  3 MR. SEARS: You are asking just what  4 documents she personally looked at?  5 MR. KRESSIN: Yeah.  6 THE WITNESS: Notes that I had made  7 regarding picnic tables from '94 to present.  8 Notes of phone conversations with buyers regarding  9 tables and picnic tables to present.  10 BY MR KRESSIN:  11 Q. Okay. Anything else?  12 A. No.  13 Q. And are these handwritten notes?  14 A. Some of them were.  15 (Discussion off the record.)  16 Q. When, when was the first time that you  17 became aware that Lifetime had a utility table or  18 were thinking about manufacturing a utility table?  19 MR. SEARS: Objection. Assumes facts  20 not in evidence.  21 THE WITNESS: I really don't know when  22 they first started discussing it amongst  23 themselves about that, the concept.  24 BY MR. KRESSIN:  25 Q. Okay. That's why I was asking when did</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. What, what were those?  2 A. There was a problem in that Lifetime  3 only produced one eight-person picnic table and  4 the only difference between what Costco carried  5 and Sam's carried was color.  6 Q. Okay. And what did, what color did  7 Costco carry?  8 A. They had a variety of colors. It would  9 change every year. First one was blue top and  10 benches. And I think the following year she went  11 to burgundy top with a sand-colored frame. And  12 then another year she did a hunter green top and  13 benches.  14 Q. Okay. And you said that you--were you  15 just brainstorming ideas?  16 A. Yes.  17 Q. Who came up with the idea of removing  18 the benches?  19 A. Vince brought it up.  20 Q. And what--how did it, how did it come  21 about? I mean, were you just saying, Hey, how  22 about us take the benches off or--  23 A. He wanted to know if that--if the  24 ideal--if the idea appealed to Deanne and I think  25 we presented that idea along with three others as</p>



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<p style="text-align: right;">Page 53</p> <p>1 potential changes.</p> <p>2 Q. Do you remember what the other changes,</p> <p>3 potential changes were?</p> <p>4 A. She wanted a square table. We talked</p> <p>5 about a round table. I think that was it.</p> <p>6 Q. Okay. What was the discussion about</p> <p>7 taking the benches off? You said Vince Rhoton</p> <p>8 came up with the idea?</p> <p>9 MR. SEARS: Objection.</p> <p>10 Mischaracterizes the prior testimony.</p> <p>11 BY MR. KRESSIN:</p> <p>12 Q. Did you say Vince Rhoton came up with</p> <p>13 the idea?</p> <p>14 A. It was something that he brought up.</p> <p>15 Q. So it was his idea at the meeting</p> <p>16 anyway?</p> <p>17 A. Eventually, yes.</p> <p>18 MR. SEARS: Objection, vague.</p> <p>19 BY MR. KRESSIN:</p> <p>20 Q. What was the discussion about the</p> <p>21 benches coming off?</p> <p>22 A. The table would be more compact for</p> <p>23 shipping if the benches could be stacked on top</p> <p>24 of the table top. And then Vince liked the idea</p> <p>25 of having it, having it be a table on its own or</p>	<p style="text-align: right;">Page 55</p> <p>1 A. It was stacked in the back behind a</p> <p>2 bunch of other samples.</p> <p>3 Q. Okay. And it was, that was returned to</p> <p>4 Lifetime?</p> <p>5 A. To Lifetime.</p> <p>6 Q. You said, what, a year, two years ago?</p> <p>7 A. I think it was two years ago.</p> <p>8 Q. Do you have any shipping documents that</p> <p>9 show when it was sent back to Lifetime?</p> <p>10 A. Not with me.</p> <p>11 Q. Do you know if those exist?</p> <p>12 A. Yes, somewhere. I think they are in an</p> <p>13 expense report somewhere.</p> <p>14 Q. Okay. Was this--well, can you describe</p> <p>15 what the prototype--what the model looked like?</p> <p>16 A. It was, it was a dark green top and</p> <p>17 benches and a galvanized square frame.</p> <p>18 Q. Okay.</p> <p>19 A. It wasn't painted at all, it was just</p> <p>20 galvanized steel.</p> <p>21 Q. Okay. Did the benches detach?</p> <p>22 A. Yes.</p> <p>23 Q. How were they attached to the table?</p> <p>24 A. The bench legs came down into an L and</p> <p>25 the diameter of the--I don't remember which way it</p>
<p style="text-align: right;">Page 54</p> <p>1 a picnic table.</p> <p>2 Q. Okay. And was that discussed with</p> <p>3 Deanne at that time then?</p> <p>4 A. Later discussions after--he first had</p> <p>5 to go back to the factory and see if it was</p> <p>6 possible to make that table.</p> <p>7 Q. Okay. Did he ever advise you whether</p> <p>8 it was possible to make that table?</p> <p>9 A. Yes.</p> <p>10 Q. And other than just taking the benches</p> <p>11 off, was there any discussion about what the table</p> <p>12 would look like at this '95 meeting?</p> <p>13 A. There was a, they put together a</p> <p>14 prototype, hand-built prototype that sent, was</p> <p>15 sent up to my office to show to the buyer.</p> <p>16 Q. Do you know what happened to that hand-</p> <p>17 built prototype?</p> <p>18 A. It stayed in my office for quite a few</p> <p>19 years and I think it was just sent back down to</p> <p>20 Clearfield to the factory a year and a half, two</p> <p>21 years ago.</p> <p>22 Q. Was it in use? I mean, were you using</p> <p>23 it as a table?</p> <p>24 A. No.</p> <p>25 Q. Just--where was it?</p>	<p style="text-align: right;">Page 56</p> <p>1 went but it fit within either the frame of the</p> <p>2 table or the frame of the table went into the</p> <p>3 benches and there were push buttons so that you</p> <p>4 could move the benches closer or further away and</p> <p>5 lock them in position.</p> <p>6 Q. And was that--did you tell me that was</p> <p>7 shown to Deanne at some point?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And do you remember when it was</p> <p>10 shown to her?</p> <p>11 A. I don't recall what year, if it was '95</p> <p>12 or '96.</p> <p>13 Q. Okay. Did Costco ever purchase any of</p> <p>14 these, these tables that you've just described?</p> <p>15 A. No.</p> <p>16 Q. Do you know if any of those tables were</p> <p>17 ever sold?</p> <p>18 A. To my knowledge they were never</p> <p>19 produced.</p> <p>20 Q. Were you ever told that they were never</p> <p>21 produced?</p> <p>22 A. Yes.</p> <p>23 Q. Who told you that?</p> <p>24 A. Vince.</p> <p>25 Q. Pardon?</p>



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<p style="text-align: right;">Page 57</p> <p>1 A. Vince Rhoton.</p> <p>2 Q. Okay. And when did he tell you that?</p> <p>3 A. I don't recall exactly when, but I'd</p> <p>4 had several discussions with him about it over a</p> <p>5 period of years and he said it was too expensive</p> <p>6 to make.</p> <p>7 Q. Did he say anything else about why it</p> <p>8 wasn't made?</p> <p>9 A. A lot of pinch points. They were</p> <p>10 concerned about people hurting themselves.</p> <p>11 Q. Anything else?</p> <p>12 A. No.</p> <p>13 Q. Did you speak to, did you ever speak to</p> <p>14 anybody else at Lifetime about this table?</p> <p>15 A. I've had discussions with Barry Mower</p> <p>16 and Brent Allen regarding that table.</p> <p>17 Q. Okay. What discussion--Brent Allen?</p> <p>18 A. Yeah, Brent Allen.</p> <p>19 Q. What discussions have you had with</p> <p>20 Barry Mower about that table?</p> <p>21 A. We, we would have meetings trying to</p> <p>22 think of new ideas and I would bring that table</p> <p>23 up as maybe something we need to redevelop and</p> <p>24 find a way to make.</p> <p>25 Q. Okay. Did that, that suggestion ever</p>	<p style="text-align: right;">Page 59</p> <p>1 Mower the fact that you all had shown this 2150</p> <p>2 or this, this table with the detachable benches to</p> <p>3 Deanna Witt at Costco?</p> <p>4 MR. SEARS: Objection. Assumes facts</p> <p>5 not in evidence.</p> <p>6 THE WITNESS: I believe I had meeting</p> <p>7 notes that he saw but I don't know if he saw my</p> <p>8 meeting notes from her meeting.</p> <p>9 BY MR. KRESSIN:</p> <p>10 Q. Okay. I'm not sure I understand your,</p> <p>11 your--you said something about meeting notes and I</p> <p>12 am not sure I understood the response to my</p> <p>13 question.</p> <p>14 My question was did you ever discuss</p> <p>15 with Barry Mower that you, you know, that you all</p> <p>16 had shown this table with the detachable benches</p> <p>17 to Deanna Witt.</p> <p>18 A. I--</p> <p>19 MR. SEARS: Same objection. Assumes</p> <p>20 facts not in evidence.</p> <p>21 THE WITNESS: I didn't have a personal</p> <p>22 conversation with him about it.</p> <p>23 BY MR. KRESSIN:</p> <p>24 Q. Okay. And so that's what your comment</p> <p>25 about the notes were, that they he may have seen</p>
<p style="text-align: right;">Page 58</p> <p>1 go anywhere?</p> <p>2 A. No.</p> <p>3 Q. Okay. Did this, was this table that</p> <p>4 you've referred to, with the detachable benches,</p> <p>5 was it ever given a model number?</p> <p>6 A. I thought I saw a, they did a sales</p> <p>7 flier at some point and I believe it was called a</p> <p>8 2150.</p> <p>9 Q. Okay. So in meetings with Barry</p> <p>10 Mower--and if this is not correct, you tell me--</p> <p>11 but in meetings with Barry Mower where you were</p> <p>12 discussing new ideas, sort of a brainstorming</p> <p>13 session, is that it was?</p> <p>14 A. Yeah.</p> <p>15 Q. You would bring up this idea of the</p> <p>16 picnic table with the detachable benches and in--</p> <p>17 and no one would come forward with any ideas that</p> <p>18 they wanted to produce that?</p> <p>19 A. They normally would tell me why it</p> <p>20 wasn't feasible to produce it, which were the</p> <p>21 square tubing being very expensive to manufacture</p> <p>22 and then we would talk around the idea trying to</p> <p>23 make that table with round tubing but their</p> <p>24 engineers figured that it would be too unstable.</p> <p>25 Q. Okay. Did you ever discuss with Barry</p>	<p style="text-align: right;">Page 60</p> <p>1 your notes?</p> <p>2 A. Right.</p> <p>3 Q. Okay. Do you have any reason to think</p> <p>4 he did or did not see them?</p> <p>5 A. I really don't know.</p> <p>6 Q. Were they sent to him?</p> <p>7 A. No, they were sent to Vince.</p> <p>8 Q. Okay. You said you had discussions</p> <p>9 with Brent Allen as well?</p> <p>10 A. Yes.</p> <p>11 Q. What discussions had you had with Brent</p> <p>12 Allen?</p> <p>13 A. Normally he was in the same meetings as</p> <p>14 with Barry and we would have these brainstorming</p> <p>15 sessions, all of us together.</p> <p>16 Q. Okay. Who would attend those meetings?</p> <p>17 A. Barry, Brent, Vince, Dave Winter, Steve</p> <p>18 Nye and there would be other people too. I can't</p> <p>19 recall exactly who was there.</p> <p>20 Q. Were there any minutes kept of those</p> <p>21 meetings?</p> <p>22 MR. SEARS: Objection. Lacks</p> <p>23 foundation.</p> <p>24 THE WITNESS: Not by me.</p> <p>25 BY MR. KRESSIN:</p>

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<p style="text-align: right;">Page 61</p> <p>1 Q. Okay. Are you aware of—I mean, did 2 anybody circulate any minutes from these meetings? 3 A. No. 4 Q. You were present? 5 A. Yes. 6 Q. Okay. Was Mr. Wohlwend present? 7 A. No. 8 Q. Mr. Stivers? 9 A. Yes. 10 Q. Were any of the engineers or 11 engineering staff present, any of Lifetime's 12 engineers or engineering staff? 13 A. Yes. 14 Q. Does the name Carl Stanford, does that 15 mean anything to you? 16 A. No. 17 Q. Okay. And did these meetings occur on 18 a, on a regular basis? 19 A. At least once a year, sometimes twice a 20 year. 21 Q. Okay. And where did they normally take 22 place? 23 A. Just prior to trade shows. And in 24 years past that's been in February at the Super 25 Show. And then I believe in May or June we'd</p>	<p style="text-align: right;">Page 63</p> <p>1 not in evidence. 2 THE WITNESS: At some point we had a 3 sample sent in as one—an idea type table and it 4 was essentially the picnic table but with the legs 5 changed a little bit so that it would be oriented 6 just as a banquet table. 7 BY MR. KRESSIN: 8 Q. Okay. 9 A. And I don't remember exactly when that 10 sample came in. 11 Q. Okay. Do you remember what, what year 12 it came in? 13 A. I'm not sure. 14 Q. Was it before or after Mr.—strike 15 that. 16 When did Mr. Stivers come to work for 17 you—or Frontier Northwest, excuse me? 18 A. In '95. 19 Q. Was it before or after Mr. Stivers came 20 to work for Frontier Northwest? 21 A. It was after he came to work for 22 Frontier. 23 Q. Okay. And how do you know that it was 24 after? 25 A. I remember seeing the table at our</p>
<p style="text-align: right;">Page 62</p> <p>1 have another meeting here in Clearfield at the 2 factory. 3 Q. Okay. What, for those of us who are 4 not indoctrinated, what is the Super Show? 5 A. The Super Show is a sporting good trade 6 show where vendors, US vendors come in and show 7 all their new products to the buyers. 8 Q. Okay. Do you know if this, this table 9 with the detachable benches, was it ever shown at 10 a trade show? 11 A. I don't think it ever was. 12 Q. Okay. Do you know who was present when 13 that table was shown to Deanna Witt? 14 MR. SEARS: Objection. Assumes facts 15 not in evidence. 16 THE WITNESS: Vince and myself. Steve 17 and Scott Hines, her assistant buyer. 18 BY MR. KRESSIN: 19 Q. Okay. Is Hines h 20 A. H-I-N-E-S. 21 Q. What was the next development, as far 22 as your concern, as far as you were involved in, 23 insofar as the, as the utility table was 24 concerned? 25 MR. SEARS: Objection. Assumes facts</p>	<p style="text-align: right;">Page 64</p> <p>1 office in Des Moines and Dan started working for 2 us when we were in Steve's house. 3 Q. Okay. And just make sure I'm on the 4 same track, the, this, this sample table—we have 5 been shown a table that we can look at later— 6 it's not up here, is it? It's downstairs—that I 7 understand came from, from Frontier Northwest. It 8 has a blue top, black legs? 9 A. Right. 10 Q. Now, I know you haven't seen it as we 11 sit here today. Is that the table that you are 12 referring to, though? 13 A. Yeah. It's a blue top with black 14 frame. 15 Q. Okay. Is that the table that you are 16 talking about was the sample that was made? 17 A. Yes. 18 Q. And when—and I didn't follow you on, 19 on, we were working out of Steve's house and then 20 moved. I didn't follow all of that. 21 A. Okay. 22 Q. Where—when were, when was work being 23 done out of Steve's house, or Mr. Wohlwend's 24 house? 25 A. I worked with him in his house from</p>



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<p style="text-align: right;">Page 65</p> <p>1 January '94 until, it was the fall of '95 we 2 moved into our current office. I don't know the 3 exact date. 4 Q. Okay. And you think that--and then 5 when did Mr. Stivers come to work for Frontier 6 Northwest? 7 A. I think it was June of '95. 8 Q. Okay. And the blue table that, that 9 you just referred to, I wasn't following when that 10 appeared or where that-- 11 A. I don't recall when we first received 12 it because we didn't keep our samples at Steve's 13 house. They were off-site at a storage unit. 14 Q. Okay. But you received it when you 15 were working at Steve's house? 16 A. Yes. It was part of all the off-site 17 storage samples when we moved the office. 18 Q. Okay. And then when you refer to 19 moving the office, is that when you moved to the 20 Des Moines address? 21 A. Yes. 22 Q. And what is that address, just for the 23 record? 24 A. 623 South 227th Street, Des Moines, 25 Washington.</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Right. 2 Q. And what was Mr. Lambert's comments 3 about that table? 4 A. He didn't like the concept because the 5 costs were so prohibitive, especially compared to 6 the current item that he had, which was a, a 7 wooden-top table. 8 Q. When you say wooden, you are talking 9 about composition or-- 10 A. Yeah. 11 Q. What was the purpose of sending the 12 sample to Frontier Northwest? 13 MR. SEARS: Objection. Calls for 14 speculation. 15 THE WITNESS: From what I remember, 16 they just wanted to get our opinion on whether we 17 thought there would be a chance of selling that 18 item in the market. 19 BY MR. KRESSIN: 20 Q. Okay. 21 A. And our opinion was pretty much the 22 same as the buyer, that it was too expensive to 23 even consider. 24 Q. Okay. Was that table ever given a 25 model number?</p>
<p style="text-align: right;">Page 66</p> <p>1 Q. And is that the, your office address 2 today? 3 A. Yes. 4 Q. Now, was, was that table that you just 5 referred to--is--was that a table that was shown 6 to Costco? 7 A. No. 8 Q. And how do you know that? 9 A. What I remember of that table is we had 10 a preliminary quote on it, which we contacted the 11 buyer about, and he didn't have any interest in 12 seeing it because the cost was so high. 13 Q. And who was that buyer? 14 A. Klaus Lambert. 15 Q. Okay. Do you remember what the cost 16 was? 17 A. It was over \$80. 18 Q. Now, is that the cost to him or the 19 cost to the retail, the retail customer? 20 A. That would have been the cost to Costco 21 and then Costco would mark it up from that point. 22 Q. So it was about an \$80 table to Costco? 23 A. Yes. 24 Q. And then Costco would have to put their 25 markup on that?</p>	<p style="text-align: right;">Page 68</p> <p>1 A. No. I-- 2 MR. SEARS: Lacks foundation. Sorry. 3 Go ahead. 4 THE WITNESS: I have always referred to 5 that table as the picnic table without benches. 6 That's the only model name, if you want to call 7 it, I ever gave it. 8 BY MR. KRESSIN: 9 Q. Okay. Were there other models, samples 10 sent to Frontier Northwest that were utility or 11 banquet tables? 12 A. Not for years and years. I don't, I 13 don't think that we had another sample until '99. 14 Q. Okay. Do you remember what the sample 15 was in '99? 16 A. It was a sandy beige top and--I don't 17 recall what the frame color was. 18 Q. Okay. Do--in referring to these tables 19 I've seen the term banquet table and I've seen 20 the term utility table. Are those 21 interchangeable? 22 MR. SEARS: Objection. Lacks 23 foundation. 24 THE WITNESS: As far as I've heard they 25 are interchangeable with Lifetime.</p>



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17 (Pages 65 to 68)

<p style="text-align: right;">Page 69</p> <p>1 BY MR. KRESSIN:  2 Q. Okay. Do you use one as opposed to the  3 other term when you are dealing with the product?  4 A. Yeah.  5 MR. SEARS: Are you talking Ms. Jackson  6 or to the company?  7 MR. KRESSIN: Well, she, she is, she is  8 a sales representative and she works for the  9 company.  10 THE WITNESS: We have referred to it  11 both ways.  12 BY MR. KRESSIN:  13 Q. Okay. What happened to, to the table—  14 again I—strike that.  15 You indicated there was the blue table  16 and then there was, there were—did you tell me  17 there were other sample tables?  18 A. We received a sample shipment of tables  19 shortly after they were starting to be shipped at  20 Costco, so I believe that was in '99.  21 Q. Okay. And this is after they started  22 manufacturing?  23 A. Yes, these were production pieces.  24 Q. Okay. And when, when the buyers at  25 Costco—strike that.</p>	<p style="text-align: right;">Page 71</p> <p>1 started coming—when we started having more  2 meetings I let him handle that category and I  3 handled just basketball and picnic tables for  4 Lifetime.  5 Q. Okay. You mentioned these, these  6 various meetings where several manager—several  7 members of management of Lifetime were present and  8 you were present, Mr. Stivers was present. When  9 did—or did the issue of utility tables become a  10 subject of, of a meeting?  11 MR. SEARS: Which question? When or  12 did?  13 MR. KRESSIN: Well, I—my first  14 question was did it become. I am not sure I was  15 terribly clear, though.  16 THE WITNESS: I don't recall when we  17 started discussing it, but it was—with the  18 success of the picnic table we were looking for  19 more ways to use the same molds and economies of  20 scale that we had with the picnic tables, but I  21 don't recall exactly when, what period of time  22 that took place.  23 BY MR. KRESSIN:  24 Q. Okay. What, what brainstorming was  25 going on as far as the utility or banquet table</p>
<p style="text-align: right;">Page 70</p> <p>1 When did the buyers at Costco show an  2 interest in this, in the utility or banquet table?  3 A. I wasn't in any of those meetings so I  4 don't know exactly when interest levels changed.  5 Q. Okay. Was that something Mr. Stivers  6 was involved in?  7 A. Yes.  8 Q. Was he working with Mr. Rhoton or do  9 you know?  10 A. The notes that I've seen show that he  11 was working with Vince Rhoton.  12 Q. Okay. When Mr. Stivers came to work at  13 Frontier Northwest when did he start becoming  14 involved with—or did he start becoming involved  15 with Costco?  16 A. Almost immediately he started attending  17 meetings with me. And then as we had new  18 products come on line, new categories, he would  19 take those on as his own categories to work on.  20 Q. Okay. I mean, was it when he came to  21 work at Frontier Northwest did he take on the  22 responsibilities of dealing or being a sales  23 representative between Costco and Lifetime for  24 these utility tables?  25 A. Yeah, for the—when the utility tables</p>	<p style="text-align: right;">Page 72</p> <p>1 was concerned?  2 MR. SEARS: Objection.  3 Mischaracterization. Assumes facts not in  4 evidence.  5 BY MR. KRESSIN:  6 Q. In other words, what discussions were  7 they having about economies of scale and using  8 these other, using the picnic table molds and so  9 forth?  10 A. I don't recall anything specific. Just  11 at some point the idea was brought up and it took  12 a long time from the initial discussions of what  13 do you think of the idea to when the costs were  14 down to a point where we could actually sell it  15 to retailers.  16 Q. Okay. The, the blue table that, that  17 you said was a sample that was sent to you, did  18 anyone, to your knowledge, look at that table  19 outside of Frontier Northwest?  20 A. Just the—Vince saw it in our office  21 one day.  22 Q. Okay.  23 A. And I think he is the only other person  24 that recognized what it was.  25 Q. Okay. When you say he saw it in your</p>



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18 (Pages 69 to 72)

<p style="text-align: right;">Page 73</p> <p>1 office one day, when would that have been?  2 A. Back in '95 or '96.  3 Q. Okay. Where in your office did he see  4 it?  5 A. It was back behind Steve's office. And  6 we kept like the fax machine and some other  7 office equipment on the table. And then  8 underneath the table were stacks and stacks of  9 boxes that—we just used it for storage.  10 Q. Used the table for storage?  11 A. Yeah, to be able to store things  12 underneath and on top.  13 Q. Okay. But it had a fax machine or a  14 copy machine on it?  15 A. A fax machine.  16 Q. Did, did the table go into use when you  17 moved into your Des Moines office?  18 A. Yes, that's when it went into use.  19 Q. Did you just pull some tables out of  20 the sample room and start using them?  21 A. Yes.  22 Q. Were there any other samples that were  23 used?  24 A. We had a couple picnic tables in our  25 sample storage that we brought out just to use as</p>	<p style="text-align: right;">Page 75</p> <p>1 a particular area that the blue table we've  2 referred to was used?  3 A. It was against the left wall between  4 the kitchen and Steve's office.  5 Q. Against the left wall?  6 A. Yeah.  7 Q. Okay. Let's do this. Let me hand you  8 a photocopy of Exhibit 880—  9 A. Okay.  10 Q. —and a red pen I brought all the way  11 from Knoxville, Tennessee.  12 A. Wow.  13 Q. And I would ask that on that photocopy  14 of 880 would you put an outline of where the  15 table was used?  16 A. Oops. I went out of the line.  17 Q. Okay. And just so we can, we can pick  18 that up when we photocopy it, would you just put  19 maybe an x in the middle of the table?  20 A. Okay.  21 Q. And we would ask that that be made,  22 let's say 880-A so we can keep track of it.  23 MR. SEARS: Or just the next number in  24 sequence.  25 MR. KRESSIN: Well, the next number in</p>
<p style="text-align: right;">Page 74</p> <p>1 a conference table initially.  2 Q. Did you have any—did you have a sample  3 of the, of the picnic table with the detachable  4 benches?  5 A. We had it but it was in the back room.  6 Q. Did you use it?  7 A. No. Mainly because it was really,  8 really heavy.  9 Q. Okay. Did you ever use it with the  10 benches detached?  11 A. Detached or attached?  12 Q. Detached.  13 A. No.  14 Q. Okay. Let me show you a drawing that  15 was done by Mr. Wohlwend at his deposition  16 yesterday. It's been marked as Exhibit 880. And  17 I'll ask you to look at that, if you would,  18 please.  19 A. It's fairly accurate, although the  20 conference room is further forward than where he  21 has it depicted.  22 Q. Okay. Had you seen this drawing before  23 today?  24 A. Yes.  25 Q. Looking at this, this drawing, is there</p>	<p style="text-align: right;">Page 76</p> <p>1 sequence is way on down the stack so I was just  2 trying to keep it in close proximity to the  3 other.  4 MR. SEARS: It's your deposition.  5 MR. KRESSIN: Yeah. We'll just make  6 that 880-A, then.  7 Exhibit-880-A marked  8 I will mark through that so we know  9 which one this is.  10 Q. Now, I think Mr. Wohlwend told us  11 yesterday that your conference room has, at least  12 partially is open or glassed. Is that right?  13 A. Yeah, glass walls.  14 Q. And that it has essentially knee walls?  15 A. No, they are five-foot high.  16 Q. Five-foot high walls?  17 A. They are all glass.  18 Q. Okay. And are they all glass, is it  19 glass on all four parameters?  20 A. Yes. Well, the door in front and a  21 door in back.  22 Q. Okay. And you can see from that  23 conference room into the other offices around it,  24 assuming the doors are open, I assume?  25 A. We have partition walls with just</p>

19 (Pages 73 to 76)



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<p style="text-align: right;">Page 77</p> <p>1 openings so—we don't have closed offices with  2 doors and so from the conference room you can see  3 in each person's office just in the entryway.  4 Q. Okay.  5 A. Except for Sam's because he is so far  6 back.  7 Q. Except for Sam's?  8 A. Yeah.  9 Q. Sam being S.W.? Sam--  10 A. No.  11 Q. Okay. Sam is on the right-hand side.  12 MR. SEARS: Sam being Sam.  13 BY MR. KRESSIN:  14 Q. S.W. is Mr. Wohlwend?  15 A. Right.  16 Q. Can you see the, the blue table in that  17 utility area or office machine room?  18 A. No. Not—you can't because there is  19 another—there is a short, a short wall that comes  20 out about two feet into this office machine supply  21 area and the conference room is not this far  22 back, it's more in line with the back of Steve's  23 office.  24 Q. Okay. Anyone walking past the office  25 machine room can look in there—could look in</p>	<p style="text-align: right;">Page 79</p> <p>1 are further on beyond that?  2 A. Right.  3 Q. Marked W and M?  4 A. Yes.  5 Q. And I assume guests are permitted to  6 walk past the office machine room to the restrooms  7 if they need to?  8 A. Yes.  9 Q. You said that this, this was, this  10 table was in storage until you moved to the Des  11 Moines offices?  12 A. Yes.  13 Q. Okay. Where—what kind of storage  14 facility was it kept in?  15 A. It was a You Store It facility, rental  16 unit  17 Q. Okay.  18 A. —that Steve had rented years before  19 and we just didn't physically have room for all  20 of our samples at his house.  21 Q. Okay. When you moved into the Des  22 Moines offices did you remove all of the stuff  23 from these You Store It places?  24 A. Yes.  25 Q. Were they moved to this office?</p>
<p style="text-align: right;">Page 78</p> <p>1 there and see it, couldn't they?  2 A. Yes. Well, no. The table itself was  3 buried, there were boxes underneath that were  4 covering the bottom part of the table and then I  5 had to put a half-inch piece of particle board on  6 the top of the table because the fax machine let  7 off some heat which would make a depression in  8 the top of the table so the only way that I could  9 keep that from happening was to put wood on top.  10 So the only part of the table that you could see  11 was just the, maybe an inch and a half of the  12 edge.  13 Q. Okay. No one had ever told you that  14 there was anything, any secrets or any, anything  15 special about that sample table, though, did they?  16 A. No.  17 Q. Now, I notice there is a kitchen area,  18 is that right, just beyond the office area?  19 A. Yes.  20 Q. And people visiting your office, are  21 they permitted to go to the kitchen to get a  22 drink or a soft drink or--  23 A. Yes.  24 Q. —coffee?  25 It looks like perhaps some restrooms</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes.  2 Q. And how, how did that move occur?  3 A. A couple of the guys had a truck, Steve  4 had a Suburban and we made several trips bringing  5 all of our samples down to our office so that we  6 could get rid of that storage unit off-site.  7 Q. Okay. Did you have any other movers  8 other than just guys in the office?  9 A. No. Steve is too cheap for that. He  10 had us laying our own carpet in there.  11 Q. Okay. Let me show you a document  12 that's been—let's see—marked as Exhibit 881.  13 This is—this does not need to go on the record.  14 (Discussion off the record.)  15 Anyway, at the top it says "price  16 list." Do you see that?  17 A. Yes.  18 Q. And then it has February 1, 1995 on it.  19 At this particular point in time, again, February  20 1, 1995, were you working with, with Costco?  21 A. Yes.  22 Q. There is a reference here to a 2120  23 banquet table. Do you see that?  24 A. Yes.  25 Q. Have you ever seen a 2120 banquet</p>



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20 (Pages 77 to 80)

<p style="text-align: right;">Page 81</p> <p>1 table?</p> <p>2 A. I never saw anything labeled 2120.</p> <p>3 Q. Okay. Did you--did anybody tell you</p> <p>4 what the 2120 table looked like?</p> <p>5 A. No.</p> <p>6 Q. Do you have any reason to--well, strike</p> <p>7 that.</p> <p>8 Is the blue table that we were just</p> <p>9 talking about earlier, the one that was in use in</p> <p>10 the, in the machine--or office equipment room, is</p> <p>11 that a 2120?</p> <p>12 A. To my knowledge, no, I have always</p> <p>13 referred to that table as the picnic table without</p> <p>14 benches.</p> <p>15 Q. Okay. Why would there be a list for, a</p> <p>16 price list for a 2120 banquet table?</p> <p>17 MR. SEARS: Objection. Lack of</p> <p>18 foundation. Calls for speculation.</p> <p>19 THE WITNESS: I really don't know.</p> <p>20 BY MR. KRESSIN:</p> <p>21 Q. Was there any, any attempt to market a</p> <p>22 2120 banquet table?</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. Do you know how long the, the--well,</p> <p>25 strike that.</p>	<p style="text-align: right;">Page 83</p> <p>1 numbering scheme that you are aware of as far as</p> <p>2 the numbers?</p> <p>3 A. I don't know what the rhyme or reason</p> <p>4 was but I know it was always a different model</p> <p>5 than what was on the basic price list.</p> <p>6 Q. The 2110, it looks like a table kit?</p> <p>7 A. Yes.</p> <p>8 Q. Do you see that?</p> <p>9 Is that something else that was</p> <p>10 marketed to Costco?</p> <p>11 A. We showed it to Costco very briefly.</p> <p>12 It was there along with other picnic table colors</p> <p>13 and the buyer didn't like the idea at all.</p> <p>14 Q. Okay. Are you aware of any other,</p> <p>15 other than the blue sample we were just talking</p> <p>16 about, blue table, are you aware of any other</p> <p>17 Lifetime tables that are described as a banquet</p> <p>18 table, six-foot long with adjustable table height,</p> <p>19 that's estimate, shipping weight 44.6 pounds?</p> <p>20 MR. SEARS: Objection. Assumes facts</p> <p>21 not in evidence. There is nothing in the record</p> <p>22 to indicate that that table was described in this</p> <p>23 fashion.</p> <p>24 THE WITNESS: At what time frame?</p> <p>25 BY MR. KRESSIN:</p>
<p style="text-align: right;">Page 82</p> <p>1 Do you know if the blue table has an</p> <p>2 adjustable height?</p> <p>3 A. Yes, it does.</p> <p>4 Q. Okay. Is that one of the, one of the</p> <p>5 comments made about the 2120 that's listed here on</p> <p>6 881?</p> <p>7 A. That's what the price list says, yes.</p> <p>8 Q. Was, was this 2120 ever discussed with</p> <p>9 Costco?</p> <p>10 A. Not with me present.</p> <p>11 Q. Okay. Was it ever discussed with</p> <p>12 anyone--any other potential buyers?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Do you know how Frontier Northwest got</p> <p>15 a copy of this price list?</p> <p>16 A. I don't.</p> <p>17 Q. Was a 21--are you familiar with a 2100</p> <p>18 table?</p> <p>19 A. Yes.</p> <p>20 Q. Was that, was that a table that was</p> <p>21 being marketed?</p> <p>22 A. That was their generic picnic table and</p> <p>23 what we always sold to Costco was a variation of</p> <p>24 that because they wanted their own special color.</p> <p>25 Q. Okay. Was there any particular</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. February 1st, 1995.</p> <p>2 A. I am not aware of any discussions of a</p> <p>3 banquet table.</p> <p>4 Q. My question is are you aware of any</p> <p>5 product that Lifetime had that fit this</p> <p>6 description in February of 1995?</p> <p>7 A. No.</p> <p>8 Q. Now, there is some writing on here that</p> <p>9 looks like 127.50 and 135.50. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know whose writing that is?</p> <p>12 A. No. No, wait. Could be mine. I think</p> <p>13 it might be mine.</p> <p>14 Q. Okay. Do you know what those numbers--</p> <p>15 A. Those would be cost to Costco for the</p> <p>16 six-foot picnic table. And I don't recall, these</p> <p>17 may have been the price to pick the table up in</p> <p>18 Clearfield versus prepaid truck load pricing.</p> <p>19 Without having any other notes, I don't know for</p> <p>20 sure.</p> <p>21 Q. Do you have any reason to believe that</p> <p>22 this, this Exhibit 881, this document, did not</p> <p>23 come from Lifetime?</p> <p>24 A. Say that again.</p> <p>25 Q. Do you have any reason to believe that</p>

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<p style="text-align: right;">Page 85</p> <p>1 Exhibit 881, this document, did not come from 2 Lifetime? 3 A. No. 4 Q. These—or this document, what, what 5 would—do you get documents of a similar nature 6 called a price list from Lifetime? 7 A. Yes. 8 Q. Do you generally get a price list for 9 products they don't make? 10 A. Sometimes. 11 Q. Okay. What other price lists have you 12 got for products that they don't make or didn't 13 make or haven't made? 14 A. They will sometimes put new basketball 15 items, new table items on price lists just to see 16 if there is interest in the marketplace. So I'll 17 see those come up from time to time even though 18 they may have no intention of ever making the 19 product or have the ability to make it in any 20 short amount of time. 21 Q. Okay. Did Lifetime ever tell you that 22 the 2120 was not going to be made? 23 A. I don't remember anything about the 24 2120 so I guess the answer is no. 25 Q. Okay. Do you, do you know if Lifetime</p>	<p style="text-align: right;">Page 87</p> <p>1 (Discussion off the record.) 2 Q. Let me show you what's been marked as 3 Exhibit 873, which appears to be titled a vendor 4 agreement (basic). Do you see that document in 5 front of you? 6 A. Yes. 7 Q. Do you know what this document is? 8 A. Yes. 9 Q. What is it, please. 10 A. This is Costco Wholesale's basic vendor 11 agreement from 1995 through, I believe, '97. 12 Q. Okay. Does this, does this document 13 relate to specific goods? 14 A. It relates to products that were sold 15 into their Department No. 27, which was lawn and 16 garden. 17 Q. Okay. And where would—where were 18 picnic tables—what department were they sold 19 into? 20 A. They were sold into lawn and garden, 21 Department 27. 22 Q. And where were the banquet or utility 23 tables, what department were they sold into? 24 A. They were sold into— 25 MR. SEARS: Objection. Vague as to</p>
<p style="text-align: right;">Page 86</p> <p>1 ever made a 2120? 2 A. I have no idea. 3 Q. Did they ever make a banquet table 4 with, with these—with this description on this, 5 that's found on Exhibit 881? 6 MR. SEARS: Objection. Lack of 7 foundation. 8 THE WITNESS: I don't know for sure. 9 MR. KRESSIN: We ask that be made an 10 exhibit to Ms. Jackson's testimony. 11 MR. SEARS: The photocopy she has been 12 looking at or the— 13 MR. KRESSIN: No, we'll just make a, 14 we'll make a duplicate in a minute and just put 15 this in there. What I was concerned about was 16 not getting Mr. Wohlwend's messed up because 17 that's what I have done to this reporter before 18 and I was trying not to do it again. 19 MR. SEARS: Will you introduce me to 20 Mr. Wolwine sometime? 21 THE WITNESS: I kind of like that. 22 MR. KRESSIN: Well, I'll tell you what. 23 I went to school with a guy named Wolwine and 24 that's where it's coming from, not that that's a 25 good excuse.</p>	<p style="text-align: right;">Page 88</p> <p>1 time. 2 BY MR. KRESSIN: 3 Q. Go ahead. 4 A. At some point they were sold into 5 office furniture, which I think is Department 31. 6 It's 30 something, I am not sure if it's 31 or 7 33, but it's not in the 20s. 8 Q. Were they ever sold into lawn and 9 garden? 10 A. No, definitely not. 11 Q. Now, there is a reference here to 12 attached PriceCostco standard terms as they may be 13 amended from time to time ("standard terms"). Do 14 you see that? 15 A. Yes. 16 Q. Where are the standard terms? 17 A. There was a separate four-page document 18 that didn't require a signature on it and I have 19 a copy of it in my office. 20 Q. Okay. Was there some particular reason 21 that wasn't produced? 22 A. Because it was a generic agreement not 23 specific to Lifetime or Lifetime tables. 24 Q. Okay. Has—have, have those standard 25 terms changed since March of 1995?</p>

22 (Pages 85 to 88)



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Deposition of Mary Jackson, 2/3/2004

<p style="text-align: right;">Page 89</p> <p>1 MR. SEARS: Objection. Lack of 2 foundation. 3 THE WITNESS: I've seen, I've seen at 4 least two other versions of standard terms and 5 they are dated when they were revised. The 6 latest revision was 2002. 7 BY MR. KRESSIN: 8 Q. What, what type of things are contained 9 in the standard terms? 10 A. A lot of what is in there would be who 11 handles freight claims if there is damage, damage 12 in freight, responsibility of vendors in paying-- 13 let's see, payment terms, how documents need to be 14 handled, that insurance needs to be provided by 15 the vendor and how much needs to be provided. 16 There was just a few of the things. It's a 17 pretty lengthy agreement. 18 Q. Okay. And the next item on this list 19 is a vendor purchase program agreement. What is 20 that? 21 A. That's sometimes called an item 22 agreement and the long form of the name of that 23 document is what you just said. I hardly ever 24 hear of that. Oh. Vendor purchase program 25 agreement was side one of the item agreement,</p>	<p style="text-align: right;">Page 91</p> <p>1 A. I think in, sometime in '99 was the 2 first time I saw one. 3 Q. Okay. Do you know if those have been 4 produced? 5 A. If Lifetime has produced banquet 6 tables? 7 Q. No, if Front--well, strike that. 8 Does Frontier have a copy of, keep 9 copies of item agreements? 10 A. Yes. 11 Q. Do you know if those have been produced 12 for, as they relate to banquet or utility tables? 13 A. I believe we were asked to provide 14 anything through '98 so anything that we had from 15 '94 to '98 was given. 16 Q. Okay. So if, if there were no item 17 agreements provided, then you, you are saying 18 Frontier Northwest doesn't have any item 19 agreements relating to banquet utility tables? 20 A. Right. 21 Q. Do you have a--or does you or 22 Northwest, either one, have a Frontier Northwest, 23 have a copy of the item agreement that went with 24 Exhibit 873? 25 A. I don't know if we still have it</p>
<p style="text-align: right;">Page 90</p> <p>1 which gave information about contact name and 2 phone numbers, return information for defectives, 3 any promotional funds that were available for 4 advertising, and I think that's all that was on 5 that side. 6 Q. Okay. You said the other side was the 7 item agreement? 8 A. Yes. 9 Q. And what did the item agreement 10 contain, what information? 11 A. UPC codes, item description, item 12 weight, dimensions, truckload quantities, costs. 13 If there were, if there was a volume rebate or 14 not in place all the payment terms were on that. 15 And on both sides of the agreement are a place 16 for both vendor and the buying staff to sign. 17 Q. Okay. Were there any item agreements 18 and/or vendor purchase program agreements for 19 banquet or utility tables? 20 MR. SEARS: Objection. Vague as to 21 time. 22 THE WITNESS: Eventually, yes. 23 BY MR. KRESSIN: 24 Q. Okay. When did they come into 25 existence?</p>	<p style="text-align: right;">Page 92</p> <p>1 because this is from '95 and it would have been 2 an item agreement for the picnic table at the 3 time. 4 Q. How do you know that? 5 A. Because this was written up for 6 Department 27, which was lawn and garden. 7 Q. Okay. Could it have been another 8 product? 9 A. No. We would have needed to fill out 10 another vendor agreement. 11 Q. Okay. And obviously the vendor 12 agreement is something that was produced by Mr. 13 Stivers but 14 A. Actually, this is my handwriting. 15 Q. Well, I meant he produced it at his 16 deposition. 17 A. Oh, okay. 18 Q. Okay. You are saying you produced it 19 by 20 A. Physically produced it, yeah. 21 Q. Are--is it, is it standard practice for 22 a vendor agreement to be, you know, the form 23 filled out by the sales representative? 24 A. Yes. 25 Q. Is this a document, this vendor</p>

23 (Pages 89 to 92)



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<p style="text-align: right;">Page 93</p> <p>1 agreement, are these forms given to sales 2 representatives? 3 A. Yes. 4 Q. By Costco? 5 A. Yes. 6 Q. The item agreements and vendor purchase 7 program agreements as well? 8 A. Yes. 9 Q. Is there any reason that you know of 10 that--why the item agreement wouldn't have been 11 attached or--to the vendor agreement? 12 A. I don't know why it would not have been 13 unless we were--I don't--I can't remember if we 14 were specifically asked for utility table and not 15 picnic table. I am trying to remember what we 16 was asked for. 17 Q. Is it normally attached? 18 A. No. 19 Q. Is it kept in the same file? 20 A. Normally, yes. 21 Q. So if, if you had it you, either, you 22 or north--Frontier Northwest, it would have been 23 in the same file physically as this vendor 24 agreement? 25 A. Yes. Although Dan isn't much of a</p>	<p style="text-align: right;">Page 95</p> <p>1 are of the products and then they'll want weight 2 and cube information so that they can run it 3 through their traffic department. 4 Q. Okay. If you, if you have someone who 5 you have filled out this item agreement for can 6 they come back and accept the terms of that item 7 agreement? 8 A. Yes. 9 Q. Okay. 10 MR. SEARS: Object. Belated objection. 11 Vague. Improper hypothetical. 12 Geoff, we have been going for a little 13 while. Mark is nodding off over there. You 14 think it might be time for a break? 15 MR. KRESSIN: Yeah, that's probably a 16 good time as any. I can, I can quit there. 17 (Recess taken.) 18 We would ask that--what number is that? 19 MR. SEARS: 873. 20 MR. KRESSIN: that Exhibit 873 be made 21 an exhibit to Ms. Jackson's testimony. 22 Q. Let me show you another document that's 23 been marked as Exhibit 313. Have you seen that 24 document before? 25 A. I have never seen it before.</p>
<p style="text-align: right;">Page 94</p> <p>1 filer so . . . depends if he had his hands on it. 2 Q. Okay. I understand the desire, 3 perhaps, to blame Mr. Stivers for this but I 4 thought you said this was your handwriting. 5 A. We shared files and he was notorious 6 for misplacing items that I had filed correctly. 7 Q. Okay. Now, would, would an item 8 agreement be, be drafted or filled out for 9 products that were not available for purchase? 10 A. Yes, we do that from time to time. 11 Q. Okay. Can you identify a product that 12 you've done that for? 13 A. I recently did one for an air hockey 14 table that's not being produced yet because the 15 buyer wanted to find out if they could hit a 16 certain retail price point and needed all that 17 information that goes onto the item agreement just 18 to run it through chain of command to see if it 19 was viable. 20 Q. So, so basically the vendor, whoever 21 that was--I'm sorry, the buyer said, We need a 22 price of x dollars or less to make this product 23 roll? 24 A. They normally don't ask for a specific 25 cost, they just want to know what our best costs</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Okay. Would you take just a second to 2 look at it? 3 MR. SEARS: Counsel, two things. 4 MR. KRESSIN: Yeah, I know what you are 5 going to say. 6 MR. SEARS: It is a violation of the 7 protective order to be showing this to Ms. 8 Jackson. 9 MR. KRESSIN: I know what you are going 10 to say. Give me it back. 11 MR. SEARS: If we can go off the 12 record, I think we can come to a suitable-- 13 MR. KRESSIN: Yeah. I mean, what I was 14 going to ask her about was, you know, the subject 15 matter of the thing which I don't think is 16 confidential--I mean, which is not a violation of 17 the protective order. 18 MR. CROCKETT: Why don't we go off the 19 record for just a second. 20 MR. KRESSIN: I'm sorry, I thought we 21 were off the record. 22 (Discussion off the record.) 23 Right before we went off the record I 24 think there was an issue raised as to whether 25 Exhibit 313 could be shown to this witness because</p>



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24 (Pages 93 to 96)



<p style="text-align: right;">Page 97</p> <p>1 of the designation, confidential, outside—excuse  2 me, outside counsel's eyes only and I think Mr.  3 Sears has, has allowed to permit this document to  4 be shown to the witness under these circumstances  5 of this deposition.  6 MR. SEARS: Yes, with the understanding  7 that the protective designation is not waived or  8 qualified.  9 MR. KRESSIN: Okay. And further  10 subject to if we want, we, being defense counsel,  11 want to ask that it be—or apply to have it  12 unsealed, we certainly are free to do that.  13 MR. SEARS: You are free to pursue the  14 remedies under the protective order.  15 MR. KRESSIN: Under the protective  16 order.  17 Q. Okay. Have having gotten that out of  18 the way, would you look at Exhibit 313? I think  19 at one point you said you had not seen that  20 document before today. Is that right?  21 A. That's correct.  22 Q. Have you had a chance to read it?  23 A. Yes.  24 Q. Okay. It appears to be from Vince  25 Rhoton, dated April 6, 1995, to various</p>	<p style="text-align: right;">Page 99</p> <p>1 foundation. Calls for speculation.  2 THE WITNESS: I don't remember.  3 BY MR. KRESSIN:  4 Q. You don't remember or you don't know?  5 A. I know we received a banquet table  6 prototype but I don't know if it was during this  7 time frame.  8 Q. Okay. And you were pointing over to  9 the blue table that's been brought into the room?  10 A. Right.  11 Q. And is that the blue table we have been  12 referring to earlier today as the one that was in  13 the, in your office?  14 A. Yes.  15 Q. Supply room?  16 A. (Witness nods head.)  17 Q. And I believe that that has been marked  18 previously as Exhibit 870.  19 MR. KRESSIN: With your identification  20 of that we would ask that Exhibit 870 be made a  21 part of her deposition as well.  22 BY MR. KRESSIN:  23 Q. Okay. So are you, are you saying that  24 this blue table, Exhibit 870, may be this model  25 2120 that's referred to here?</p>
<p style="text-align: right;">Page 98</p> <p>1 individuals. It appears to be an e-mail. Is  2 that what you—would you agree or disagree that  3 that's what it appears to be?  4 A. That's what—  5 MR. SEARS: Objection. Calls for  6 speculation.  7 THE WITNESS: That's what it looks like  8 to me but I don't know for sure.  9 BY MR. KRESSIN:  10 Q. I understand.  11 Now, the first paragraph says, I need  12 to send a copy of the model 2120 "telescoping  13 banquet table" to PriceCostco. I discuss this  14 with Steve Nye and he said it could be ready to  15 ship by 19 April, 1995.  16 Have I read that accurately?  17 A. Yes.  18 Q. Now, do you know what the telescoping  19 banquet table model 2120 is that's referred to  20 here?  21 A. I do not.  22 Q. Are you aware of whether a banquet  23 table of any kind was shipped around 19 April,  24 1995?  25 MR. SEARS: Objection. Calls—lack of</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. SEARS: Objection.  2 Mischaracterizes the witness' prior testimony.  3 THE WITNESS: I have no idea if it is  4 or not.  5 BY MR. KRESSIN:  6 Q. Were any other telescoping banquet  7 tables, that you are aware of, ever sent to  8 PriceCostco?  9 MR. SEARS: Objection. Assumes  10 multiple facts not in evidence.  11 THE WITNESS: What not-what time frame?  12 BY MR. KRESSIN:  13 Q. In around 19 April, 1995.  14 A. To my knowledge, Costco—PriceCostco  15 never saw this table nor any other telescoping  16 banquet table during this time frame.  17 Q. Okay. This, this particular document  18 appears to have been dated a couple months after  19 that price list we were looking at earlier and  20 it's dated February 1, 1995.  21 A. Yes.  22 Q. Do you see that?  23 And, again, the price list refers to a  24 2120. Do you know if, if this reference in  25 Exhibit 313 is, is associated or connected with</p>



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25 (Pages 97 to 100)

<p style="text-align: right;">Page 101</p> <p>1 the reference in Exhibit 880?</p> <p>2 MR. SEARS: Objection. Lack of</p> <p>3 foundation.</p> <p>4 BY MR. KRESSIN:</p> <p>5 Q. 881.</p> <p>6 MR. SEARS: Would it be possible to put</p> <p>7 that exhibit over in front of the witness so she</p> <p>8 can look at it while you are talking about it?</p> <p>9 BY MR. KRESSIN:</p> <p>10 Q. This is Exhibit 881.</p> <p>11 A. I have no way of knowing if these are</p> <p>12 referring to the same tables or not.</p> <p>13 Q. Okay. Are they the same model numbers?</p> <p>14 A. According to what's written here, yes.</p> <p>15 Q. Okay. The second paragraph says, "I</p> <p>16 must have an official cost before allowance," then</p> <p>17 it has "(BA-CBA) on this item before I present it</p> <p>18 to the buyers. I would also need estimates of</p> <p>19 when we can ship this item in the fall."</p> <p>20 First of all, what's that B-CBA?</p> <p>21 MR. SEARS: Objection. Lack of</p> <p>22 foundation. Also, now that we have the entire</p> <p>23 contents of Exhibit 313 read into the record I</p> <p>24 would ask that the portion of the record beginning</p> <p>25 with when you started reading from Exhibit 313</p>	<p style="text-align: right;">Page 103</p> <p>1 BY MR. KRESSIN:</p> <p>2 Let me show you a document—I am just</p> <p>3 trying to keep a stack over here. Thank you. A</p> <p>4 document that's been marked as Exhibit 862. Have</p> <p>5 you seen that document before?</p> <p>6 A. Yes.</p> <p>7 Q. Whose handwriting is this?</p> <p>8 A. That's my handwriting.</p> <p>9 Q. Okay. There is a reference there to a</p> <p>10 Mary Derheim?</p> <p>11 A. That's me.</p> <p>12 Q. Okay. Is this a Frontier Northwest</p> <p>13 form?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, this one shows the address</p> <p>16 as being 26233 Marine View Drive South, Kent,</p> <p>17 Washington?</p> <p>18 A. Yes. That's Steve's house?</p> <p>19 Q. Okay. So you were working out of</p> <p>20 Steve's house still in, in May 1995?</p> <p>21 A. Yes.</p> <p>22 Q. Would you have continued to use old</p> <p>23 forms with old addresses after you moved?</p> <p>24 A. No. We specifically threw them out</p> <p>25 when we moved offices.</p>
<p style="text-align: right;">Page 102</p> <p>1 forward be marked as confidential, outside counsel</p> <p>2 eyes only in the protective order.</p> <p>3 MR. KRESSIN: Okay.</p> <p>4 THE WITNESS: I don't know what that</p> <p>5 designation means. I have never seen that before.</p> <p>6 BY MR. KRESSIN:</p> <p>7 Q. Okay. Do you know if, if any banquet</p> <p>8 table was shipped in the fall of 1995?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Do you know what the term cost before</p> <p>11 allowance means?</p> <p>12 A. I can speculate, but I don't know what</p> <p>13 he is referring to in here.</p> <p>14 Q. Okay. Is that, is that a term that</p> <p>15 Costco would use?</p> <p>16 A. No.</p> <p>17 Q. Is it a term that Frontier Northwest</p> <p>18 would use?</p> <p>19 A. No.</p> <p>20 MR. KRESSIN: Okay. We will just mark</p> <p>21 that for identification purposes to her deposition</p> <p>22 because I don't think she can say what she thinks</p> <p>23 that is.</p> <p>24 Exhibit 313.</p> <p>25 (Discussion off the record.)</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Okay. And it says to Vince. Now, is</p> <p>2 that Vince Rhoton?</p> <p>3 A. Yes, it is.</p> <p>4 Q. Was this a memo that you sent to Vince?</p> <p>5 A. I faxed this to Vince.</p> <p>6 Q. Okay. Subject matter is banquet</p> <p>7 tables?</p> <p>8 A. Yes.</p> <p>9 Q. It says, the buyer at PriceCostco for</p> <p>10 office furniture banquet tables is Klaus Lambert</p> <p>11 and it has a phone number. Is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And is the Klaus Lambert we were</p> <p>14 talking about earlier that was the buyer at</p> <p>15 PriceCostco?</p> <p>16 A. Yes.</p> <p>17 Q. It says, send information to me on the</p> <p>18 product. And then it has a parentheses, cost,</p> <p>19 weight, cube, truckload quantity, UPC,</p> <p>20 availability, close paren. And I'll show it to</p> <p>21 the buyer right away. Thanks.</p> <p>22 Have I read that accurately?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. What product are we talking</p> <p>25 about here?</p>

26 (Pages 101 to 104)



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<p style="text-align: right;">Page 105</p> <p>1 A. That's referring to a banquet table  2 that Vince wanted me to show to the buyers at  3 Costco.  4 Q. Okay. Is that the blue table that's  5 been referred to as Exhibit 870?  6 A. I don't know for sure if that was the  7 sample or not.  8 Q. Okay. But there was a sample utility  9 table sent to you at Frontier Northwest?  10 MR. SEARS: Objection. Vague as to  11 time.  12 BY MR. KRESSIN:  13 Q. In May of 1995--or in the vicinity--  14 strike that.  15 Was there a utility table sent to you  16 in 1995 that was shown to Klaus Lambert?  17 A. No.  18 Q. Were you ever given cost, weight, cube,  19 truckload quantity and the rest of this  20 information on a utility table?  21 A. I was given some of that information  22 and that information was given to Klaus. And  23 from that information Klaus showed no interest in  24 seeing the table.  25 Q. Okay. Did you show him a picture of</p>	<p style="text-align: right;">Page 107</p> <p>1 865 and ask--  2 MR. CROCKETT: 863.  3 MR. KRESSIN: Sorry, 864 and 863.  4 Excuse me.  5 BY MR. KRESSIN:  6 Q. --and ask if you can identify those,  7 please.  8 A. Yes, I recognize these.  9 Q. This is a document that you looked at  10 yesterday?  11 A. Yes.  12 Q. What is this document? And, again, I  13 am specifically looking at 864. What is that  14 document?  15 A. This is a fax cover sheet from Vince to  16 myself.  17 Q. Okay. And what does it refer to?  18 A. It's referring to the banquet table  19 that he was interested in showing to Costco.  20 Q. Okay. And there is reference here, it  21 says, transmitting three pages, including cover  22 sheet. And we were able to assemble two pages  23 and not three. Do you know what the third page  24 might have been?  25 A. I do not.</p>
<p style="text-align: right;">Page 106</p> <p>1 the table?  2 A. No.  3 Q. Did you explain to him what the table  4 was?  5 A. Yes.  6 Q. What did you tell him the table was?  7 A. I explained to him that we were already  8 selling the lawn and garden department and that  9 would essentially be the picnic table item that we  10 were selling to lawn and garden but without the  11 benches and gave him the cost information.  12 And from that he wouldn't even give me  13 an appointment to show it to him.  14 Q. Okay. Do you remember what time frame  15 you received that information relative to this May  16 4, 1995?  17 A. I believe it was within a month--  18 Q. Okay.  19 A. --of asking for the information.  20 Q. So roughly June of 1995?  21 A. Yes.  22 MR. KRESSIN: I would ask that be  23 made an exhibit to your deposition, 862.  24 Let me show you a document--two  25 documents that have been marked Exhibit 864 and</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Okay. Did you call Mr. Lambert--strike  2 that.  3 When did you call Mr. Lambert and tell  4 him about the pricing and so forth?  5 A. It was right around the time that I  6 received this information, so end of May of '95.  7 Q. Okay. This information being the  8 information on Exhibit 864 and 863?  9 A. Yes. Mainly 863.  10 Q. Right. Now, look at 863. What is  11 that?  12 A. This is a quote from Lifetime for  13 Costco on the banquet table.  14 Q. Okay. And was that transmitted to Mr.  15 Lambert?  16 A. No.  17 Q. How do you know that it wasn't?  18 A. This was information that I just kept  19 in my file in my office.  20 Q. What file was that?  21 A. I have files on all my vendors and  22 items and it was in that item folder.  23 Q. Okay. So you had an item folder on a  24 2120?  25 A. I just had a Lifetime Leisure file for</p>

27 (Pages 105 to 108)



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1 1995 and it was in that file.  
 2 Q. Okay. Again, this refers to a six-  
 3 foot, looking at 363, it says a six-foot banquet  
 4 table  
 5 MR. SEARS: Was that 863?  
 6 MR. KRESSIN: Yes.  
 7 MR. SEARS: Okay.  
 8 BY MR. KRESSIN:  
 9 Q. It says a "6-foot banquet table, 72  
 10 inches, molded, with telescoping legs. Weight,  
 11 44.6 pounds, length, 72.5, width, 28.5, height,  
 12 2.5 (inches)." And then it says, total-  
 13 something, looks like F13?  
 14 A. That's—they are designating cubic  
 15 foot.  
 16 Q. Okay. So that's F13?  
 17 A. Yes.  
 18 Q. And that's colon 2.99?  
 19 A. Yes.  
 20 Q. And it's been assigned a UPC, right?  
 21 A. Yes.  
 22 Q. Okay. Now, it says also, "See attached  
 23 item agreement for additional terms and  
 24 conditions."  
 25 Would that be what the third page would

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1 have been?  
 2 MR. SEARS: Objection. Lack of  
 3 foundation. Calls for speculation.  
 4 THE WITNESS: I don't know. This was a  
 5 standard form that Vince used for quoting items to  
 6 Costco and I don't know if he put that together  
 7 or not for this item.  
 8 BY MR. KRESSIN:  
 9 Q. Okay. Referring back to Exhibit 862  
 10 for a moment, going down there to the last  
 11 paragraph above "Thanks."  
 12 A. Yes.  
 13 Q. It said, "send information"—again,  
 14 this is a memo to Vince Rhoton—it says, "send  
 15 information to me on the product," and then it  
 16 has various information. And then it goes on, "and  
 17 I'll show it to the buyer right away." Do you  
 18 see that?  
 19 A. Yes.  
 20 Q. Now, are you saying that you are going  
 21 to show the product to him right away?  
 22 A. I meant that I would be getting the  
 23 information about the product to Klaus.  
 24 Q. Okay. And is this the information  
 25 going back to 363 that you need?

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1 A. Some of it.  
 2 Q. Okay. Is this the information that you  
 3 did call and discuss with Klaus Lambert?  
 4 A. Yes.  
 5 Q. Again—  
 6 MR. SEARS: I think you said 363. You  
 7 meant 863?  
 8 MR. KRESSIN: I probably did. I did  
 9 mean 863. Thank you.  
 10 I would ask that 864 and 863 be made  
 11 exhibits to her testimony.  
 12 BY MR. KRESSIN:  
 13 Q. Let me show you what's been marked  
 14 previously as Exhibit 862. I'm sorry, 882. Have  
 15 you seen that letter before?  
 16 A. Yes.  
 17 Q. Okay. When did you see it?  
 18 A. I saw it yesterday.  
 19 Q. Okay. Now, there is a, there is a  
 20 reference there to a steering committee. Do you  
 21 see that on the first line?  
 22 A. Yes.  
 23 Q. Do you know who, who was on that  
 24 steering committee?  
 25 A. I do not.

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1 Q. Did you know there was a steering  
 2 committee?  
 3 A. I had heard references to the steering  
 4 committee but never who was on it.  
 5 MR. KRESSIN: Okay. That's all I have  
 6 on that one. I would just ask that that be made  
 7 an exhibit to her testimony as 882.  
 8 BY MR. KRESSIN:  
 9 Q. Let me show you what's been marked as  
 10 Exhibit 883. Have you seen that document before?  
 11 A. It looks like a duplicate of what I  
 12 just saw.  
 13 Q. Okay. Look at what you just saw.  
 14 A. This is the first time I've seen 883.  
 15 Q. Okay. Now you've had a chance to  
 16 compare it to 882. Is it different?  
 17 A. Yes.  
 18 Q. Okay. I think this letter is addressed  
 19 to Michael Day at PriceCostco, looking at 883?  
 20 A. Yes.  
 21 Q. Who is Michael Day?  
 22 A. I don't have any idea.  
 23 Q. Okay.  
 24 A. I thought I knew everybody there.  
 25 Q. Down in the, in the middle of this



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28 (Pages 109 to 112)

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<p style="text-align: right;">Page 113</p> <p>1 document there is a reference to, "attached is a 2 copy of your year-to-date sales along with a sheet 3 outlining our forecast for the balance of 1995." 4 Do you see that? It's the second or 5 third paragraph from the bottom. 6 A. Yes. 7 Q. Do you know where that, that sheet 8 outlining forecasts is? 9 A. No. 10 MR KRESSIN: Okay. I would ask that 11 be made a copy of--made an exhibit to her 12 deposition. That's 883. 13 BY MR. KRESSIN: 14 Q. Let me show you a document that's dated 15 August 31, 1995 and again has a vendor agreement 16 (basic) on it. This appears to be similar to the 17 agreement form that we looked at earlier with some 18 differences where it's filled in. Oh, is this 19 your writing? 20 A. This is not. 21 Q. Okay. There is a reference to vendor 22 AP number. It's got "30007"? 23 A. Yes. 24 Q. What is that? 25 A. That's Costco's designated vendor</p>	<p style="text-align: right;">Page 115</p> <p>1 goods and--what was the other department, lawn and 2 garden? 3 A. And lawn and garden. It was about this 4 time that they tried to start consolidating some 5 of these forms. 6 Q. Okay. Do you know where the item 7 agreement is that goes with this document? 8 A. I do not. 9 Q. What number are we up to? 10 (Discussion off the record.) 11 We ask that that be marked as Exhibit 12 889, please. 13 Exhibit-889 marked 14 Let me show you a document that is 15 identified as STIV319. It is a document produced 16 by Mr. Stivers. Have you seen that document 17 before? 18 A. Well, it came to my e-mail address so I 19 would say I did see it at some time. I can't 20 remember seeing it before. Oh, I know. 21 Q. Pardon? 22 A. I remember what this is for, Costco 23 Canada. 24 Q. Okay. 25 A. For the--they--the--Dawna Sas, the</p>
<p style="text-align: right;">Page 114</p> <p>1 number for Lifetime. 2 Q. Okay. And then under it says 3 "Department 26"? 4 A. Department 26 was sporting goods. 5 Q. Okay. So this, would this be a vendor 6 agreement to sell products into the Sporting Goods 7 Department? 8 A. It appears to be for sporting goods and 9 lawn and garden because of the buyer signatures on 10 the second page. Karen Langston was the lawn and 11 garden buyer at the time and Leslie Watson was 12 the sporting good buyer. 13 Q. Okay. Can you read--do you think 14 both--well, strike that. 15 Does it appear that both signed it? 16 A. Yeah. I recognize both of their 17 signatures. 18 Q. Okay. Under that it says "by G" and 19 there is a scribble, a "GMM" below that? 20 A. Yes. 21 Q. What's that? 22 A. That's Gary Ojendyk's signature. 23 Q. What does the term GMM mean? 24 A. General Merchandise Manager. 25 Q. So you think that was for sporting</p>	<p style="text-align: right;">Page 116</p> <p>1 buyer for Costco Canada West, wanted to have an 2 umbrella hole in her picnic table. 3 Q. Okay. And who, who did you deal with 4 on getting--or at least addressing the issue of a 5 hole in the picnic table? 6 A. I worked with Vince on that. 7 Q. Now, there is a reference on here to 8 Carl Stanford. Do you see that? 9 A. I do. 10 Q. Does this bring to mind who Carl 11 Stanford might be? 12 MR. SEARS: Objection. Calls for 13 speculation. 14 THE WITNESS: I don't recall a Carl 15 Stanford. I don't believe I have ever had a 16 conversation directly with him. 17 BY MR. KRESSIN: 18 Q. And what is LifetimePo? 19 A. I don't know. 20 Q. Do you know who Clint Morris is? 21 A. Yes. 22 Q. Who is Clint Morris? 23 A. Yes, I do. 24 Q. I said who is he. 25 A. Oh, who is he?</p>

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Deposition of Mary Jackson, 2/3/2004

<p style="text-align: right;">Page 117</p> <p>1 Q. Yes.</p> <p>2 A. He was another sales manager for</p> <p>3 Lifetime.</p> <p>4 Q. Did you have any dealings with him?</p> <p>5 A. Yes.</p> <p>6 Q. On utility or banquet tables?</p> <p>7 A. No.</p> <p>8 Q. What products did you deal with Clint</p> <p>9 Morris with?</p> <p>10 A. Picnic tables.</p> <p>11 Q. And did you tell me who Susan was</p> <p>12 that's referred to in here?</p> <p>13 A. Susan is Dawna's assistant buyer in</p> <p>14 Canada.</p> <p>15 Q. Do you know her name—or full name?</p> <p>16 A. I don't remember her last name.</p> <p>17 Q. Okay. I would ask that be made the</p> <p>18 next exhibit, 890.</p> <p>19 Exhibit-890 marked</p> <p>20 (Discussion off the record.)</p> <p>21 Let me show you a document that's</p> <p>22 referenced as STIV337 through STIV33—I'm sorry--</p> <p>23 341 and ask you to take a look at that, please.</p> <p>24 A. Okay.</p> <p>25 Q. Have you ever seen these documents</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. Is that the table that you are—or an</p> <p>2 image of the table that you had referred to</p> <p>3 earlier as the picnic table with detachable</p> <p>4 benches?</p> <p>5 A. Yes, it looks just like the one we had.</p> <p>6 Q. This looks like the one you had that</p> <p>7 you sent back to Lifetime?</p> <p>8 A. Yes. Yeah.</p> <p>9 Q. Okay. I understood that the concept</p> <p>10 of, of detachable benches from a picnic table was</p> <p>11 a concept that came up originally in a meeting</p> <p>12 with—was it Deanna Witt at Costco?</p> <p>13 A. Yes.</p> <p>14 Q. Before October of '96?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Was Costco going to be the</p> <p>17 exclusive on this picnic table with detachable</p> <p>18 benches?</p> <p>19 A. If Costco had decided to move that</p> <p>20 direction, then they would have been for a period</p> <p>21 of time.</p> <p>22 Q. Did Costco decide to or not to move in</p> <p>23 that direction?</p> <p>24 A. They decided not to do that.</p> <p>25 Q. When did that occur?</p>
<p style="text-align: right;">Page 118</p> <p>1 before?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. When did you see those?</p> <p>4 A. When we first received them in '96, and</p> <p>5 I believe I saw this yesterday as well.</p> <p>6 Q. Okay. This is a, appears to be, at</p> <p>7 least 337 appears to be a letter addressed to</p> <p>8 Rick Noegel, Naugle</p> <p>9 A. Noegel.</p> <p>10 Q. At Eagle Hardware. Is that right?</p> <p>11 A. Yes.</p> <p>12 Q. And it has quotes and sales sheets and</p> <p>13 so forth attached, does it not?</p> <p>14 A. It does.</p> <p>15 Q. Over on the second page, STIV338, there</p> <p>16 is a reference to a 2150, eight-person folding</p> <p>17 preassembled picnic table with removable benches.</p> <p>18 A. Yes.</p> <p>19 Q. Now, is, is this the, the table that</p> <p>20 you had referred to earlier as the picnic table</p> <p>21 with detachable benches?</p> <p>22 A. I—yes, I believe it is.</p> <p>23 Q. Okay. Well, if you'll flip over there</p> <p>24 to exhibit STIV341.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Probably spring of '96.</p> <p>2 Q. Okay. Was there any documentation as</p> <p>3 to the fact that they are not moving in that</p> <p>4 direction?</p> <p>5 A. No. It was just phone conversations</p> <p>6 that I had with the buyer.</p> <p>7 Q. Okay. Now, one of the things that,</p> <p>8 that I understood you to say was that Lifetime</p> <p>9 decided not to, to manufacture a 2150 because of</p> <p>10 pinch point issues and things of that nature. Is</p> <p>11 that right?</p> <p>12 A. That was my understanding.</p> <p>13 Q. Okay. That's what you were told?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. When were you told they weren't</p> <p>16 going to press forward with the development of the</p> <p>17 table with the detachable benches?</p> <p>18 A. I don't recall exactly when, but just</p> <p>19 looking at this quote from '97, this was one of</p> <p>20 the reasons why they didn't move forward, was the</p> <p>21 table was so expensive compared to the previous</p> <p>22 model that didn't have detachable benches. No</p> <p>23 buyers were interested in buying it.</p> <p>24 Q. Okay.</p> <p>25 A. None of our buyers from—in the</p>



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<p style="text-align: right;">Page 121</p> <p>1 Washington state.</p> <p>2 Q. Okay. But at least in October of '96</p> <p>3 they were still, still trying to generate interest</p> <p>4 in the table?</p> <p>5 A. Yes.</p> <p>6 Q. "They" being Lifetime?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know if a 2150 model, the table</p> <p>9 itself, was shown to Mr. Noegel or Naugle?</p> <p>10 A. I attended one meeting and we showed</p> <p>11 him the four, four-person and the eight-person but</p> <p>12 not the detachable bench piece.</p> <p>13 Q. Did you have a detachable bench piece?</p> <p>14 A. Yes.</p> <p>15 Q. What was the reason for not showing it</p> <p>16 to him?</p> <p>17 A. Couldn't fit it in our truck with the</p> <p>18 other two.</p> <p>19 Q. Did you ever show any buyers the 2150?</p> <p>20 A. I showed the 2150 to Deanne Witt.</p> <p>21 Q. Do you remember when that was?</p> <p>22 A. Not off the top of my head.</p> <p>23 Q. Can you give me the year?</p> <p>24 A. '95.</p> <p>25 Q. Were you familiar or did you know that</p>	<p style="text-align: right;">Page 123</p> <p>1 Have you seen that document before?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. When, when did you see it?</p> <p>4 A. I saw it yesterday for the first time.</p> <p>5 Q. Okay. This appears to reference a</p> <p>6 meeting between Dan Stivers and Vince Rhoton and</p> <p>7 Rick Noegel.</p> <p>8 A. Yes.</p> <p>9 Q. Did you attend that meeting?</p> <p>10 A. No.</p> <p>11 Q. You said something earlier about a, I</p> <p>12 thought you and someone else had met with Mr.</p> <p>13 Noegel about the three tables referenced in</p> <p>14 Exhibit 891.</p> <p>15 MR. SEARS: Objection.</p> <p>16 Mischaracterizes the prior testimony.</p> <p>17 THE WITNESS: The meeting—I had a</p> <p>18 meeting with Dan and I had a meeting with Rick</p> <p>19 and I don't, I don't know if it was before this</p> <p>20 meeting or after but he needed to see the tables</p> <p>21 one more time.</p> <p>22 BY MR. KRESSIN:</p> <p>23 Q. Okay.</p> <p>24 A. Or see them initially.</p> <p>25 Q. Okay. Do you know if this—down at the</p>
<p style="text-align: right;">Page 122</p> <p>1 Lifetime had a website?</p> <p>2 MR. SEARS: Objection. Assumes facts</p> <p>3 not in evidence.</p> <p>4 BY MR. KRESSIN:</p> <p>5 Q. Did you know if they had a website?</p> <p>6 A. I know they have one today. I don't</p> <p>7 know when they started having one.</p> <p>8 Q. When were you first aware that there</p> <p>9 was a website?</p> <p>10 A. The year 2000.</p> <p>11 Q. And how did you become aware of that?</p> <p>12 A. They talked about it at the sales</p> <p>13 meeting</p> <p>14 Q. Okay.</p> <p>15 A. --that year.</p> <p>16 Q. Did you ever hear any discussion or</p> <p>17 reference about a Lifetime website prior to the</p> <p>18 year 2000?</p> <p>19 A. No.</p> <p>20 Q. I would ask that this STIV337—or</p> <p>21 STIV341 be made the next exhibit.</p> <p>22 Exhibit-891 marked</p> <p>23 Let me show you what's been marked as</p> <p>24 Exhibit 868. Give me that other one. I'll get</p> <p>25 it out of your way.</p>	<p style="text-align: right;">Page 124</p> <p>1 bottom it says, "I will be bringing samples of</p> <p>2 these tables for our meeting." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. 2150 was one of those referenced?</p> <p>5 A. Yes.</p> <p>6 Q. Did he, did Mr. Rhoton, or do you know</p> <p>7 if Mr. Rhoton took those three samples, samples of</p> <p>8 those three tables to Mr. Noegel?</p> <p>9 A. I don't know.</p> <p>10 Q. Might have, might not have?</p> <p>11 A. Right.</p> <p>12 MR. KRESSIN: I ask that be made</p> <p>13 part—or an exhibit to her deposition.</p> <p>14 BY MR. KRESSIN:</p> <p>15 Q. Let me show you a document that's been</p> <p>16 marked as STIV348 and STIV335 and ask if you</p> <p>17 would look at that.</p> <p>18 Okay. Have you seen that letter</p> <p>19 before?</p> <p>20 A. Yes.</p> <p>21 Q. When did you see it?</p> <p>22 A. I remember seeing it when it was first</p> <p>23 made in '96.</p> <p>24 Q. Okay. It's not one you saw yesterday?</p> <p>25 A. No, I don't think so.</p>



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Deposition of Mary Jackson, 2/3/2004

<p style="text-align: right;">Page 125</p> <p>1 Q. Okay. Now, this refers to, it says, 2 "On behalf of Vince Rhoton and Mary Derhelm I 3 would like to thank you for your time spent 4 reviewing the table presentation." 5 And it's authored by Dan Stivers. Is 6 that-- 7 A. Okay. 8 Q. This, this seems to suggest that you 9 were at the meeting--or at a meeting close to 10 this October 28, 1996 meeting that's been referred 11 to in the 12 MR. SEARS: Objection. 13 Mischaracterizes the document. 14 BY MR. KRESSIN: 15 Q. --referred to in the earlier exhibit. 16 A. Yeah. He was keeping me in the loop on 17 this negotiation because I, I did meet with Dan 18 and Rick at--either before or after the May 19 meeting and I remember I wasn't there with Vince 20 because I locked myself out of my car and got to 21 hang out for about three hours waiting for a tow 22 truck. 23 Q. Okay. Is this, is this the, is this a 24 follow-up letter to the meeting that appears to be 25 referred to in Exhibit 368? Let me give you</p>	<p style="text-align: right;">Page 127</p> <p>1 that the DuraTable's top and benches contain 2 resins which are produced with color degradation 3 inhibitors. 4 Do you see that? 5 A. Yes. 6 Q. Did you ever see an engineering report 7 with regard to color degradation inhibitors? 8 A. No. 9 Q. I would ask that that be made the next 10 exhibit. 11 Exhibit-892 marked 12 MR. SEARS: Good time for lunch? 13 MR. KRESSIN: Pardon? 14 MR. SEARS: Good time for lunch? 15 MR. KRESSIN: We might as well. 16 (Recess taken at 12:25 p.m. and resumed at 1:10 17 p.m.) 18 BY MR. KRESSIN: 19 Q. Let me show you what has been marked as 20 Exhibit 884. 21 MR. KRESSIN: Is that a deposition 22 exhibit? 23 MR. SEARS: Uh-huh. 24 MR. KRESSIN: Okay. 25 MR. SEARS: Oh, I think this may have</p>
<p style="text-align: right;">Page 126</p> <p>1 the ... 2 A. Yes, this would be a follow-up letter 3 to this quote. 4 Q. But you weren't actually at the 5 meeting? 6 A. No. 7 Q. Okay. Let's stick it back in this 8 pile. 9 A. It may be that I helped transport 10 samples to the meeting but I wasn't part of the 11 meeting with Vince and Rick and Dan. 12 Q. Okay. There is a, there is a reference 13 down there under, looks like bullet point five. 14 Is says, "Included in this quote is a close-out 15 opportunity on a blue 2101 eight-person folding 16 preassembled picnic table for \$120."-- 17 A. Yes. 18 Q. --"delivered in truckload quantities at 19 any west coast location." 20 A. (Witness nods head.) 21 Q. Is this blue the same blue as in 22 Exhibit 870? 23 A. Yes, it's the same blue. 24 Q. Now, there's, on that second bullet 25 point talks about an engineers at Lifetime report</p>	<p style="text-align: right;">Page 128</p> <p>1 been my copy. 2 MR. SEARS: Okay. You have got 868. 3 MR. KRESSIN: Pardon? Yeah, I have got 4 it. I just didn't know if it went in the stack. 5 I am just trying to keep it straight. 6 THE WITNESS: They use that gray in 7 here and you can't read it. 8 BY MR. KRESSIN: 9 Q. Have you had an opportunity to look at 10 Exhibit 886? Is it 886? 11 A. This one? 884? 12 Q. 884. Excuse me. 13 A. Yes. 14 Q. Can you tell me what that is? 15 A. I can only guess as to what it is 16 because I've never seen it before. 17 Q. Okay. You hadn't seen it before today? 18 A. No, I have not. 19 Q. Okay. There is a reference here down 20 the middle to a 2150. 21 A. Yes. 22 Q. And then there is a blackout and it 23 looks like it's probably a description of the 2150 24 on there if I can read through it. It says, "FOB 25 142" and then extension price looks like "155.50"?</p>



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<p style="text-align: right;">Page 129</p> <p>1 A. Yes.</p> <p>2 Q. And that seems to be quite a bit less</p> <p>3 than the price that was being quoted to Eagle.</p> <p>4 A. I don't recall what that quote was from</p> <p>5 Eagle.</p> <p>6 Q. Okay</p> <p>7 A. That was before lunch.</p> <p>8 Q. Maybe not. I am not sure we are</p> <p>9 comparing apples to apples with that Eagle quote,</p> <p>10 are we, compared to this quote in Exhibit 885?</p> <p>11 A. The FOB price was less but the prepaid</p> <p>12 price was higher.</p> <p>13 Q. Okay.</p> <p>14 A. As long as we are—as long as Lifetime</p> <p>15 meant for these to be the same, since you can't</p> <p>16 read the description on the Worldwide</p> <p>17 Distributors.</p> <p>18 Q. So does the, was the F—is that an FOB</p> <p>19 price to Eagle?</p> <p>20 A. On the Eagle quote there is an FOB Utah</p> <p>21 price of 146.</p> <p>22 Q. Okay. And this one is 142.</p> <p>23 MR. SEARS: Was there a question</p> <p>24 pending?</p> <p>25 MR. KRESSIN: I thought she was looking</p>	<p style="text-align: right;">Page 131</p> <p>1 THE WITNESS: I can always speculate</p> <p>2 that it's from Lifetime Leisure because of the</p> <p>3 emblem at the top.</p> <p>4 BY MR. KRESSIN:</p> <p>5 Q. There is also a term down here that</p> <p>6 says "retailer margin."</p> <p>7 A. Yes.</p> <p>8 Q. And it has .35. I assume that's a 35</p> <p>9 percent margin.</p> <p>10 A. That would be my guess.</p> <p>11 Q. Okay. You've never seen anyone try to</p> <p>12 figure out the retailer margin or use that</p> <p>13 retailer margin and put—let me strike that</p> <p>14 question.</p> <p>15 When you are talking to potential</p> <p>16 buyers do you—do they tell you what their margin</p> <p>17 is or what margin they want to keep?</p> <p>18 A. Buyers from retailers such as Worldwide</p> <p>19 disclose that information. The buyers that I</p> <p>20 mainly work with being at Costco, they do not.</p> <p>21 Q. Okay. Okay. Well, let's go ahead and</p> <p>22 mark—well, it's already been marked so just make</p> <p>23 it part of your deposition for identification.</p> <p>24 Let me show you a document that's been</p> <p>25 marked as Exhibit 866, please. Thank you.</p>
<p style="text-align: right;">Page 130</p> <p>1 at it.</p> <p>2 BY MR. KRESSIN:</p> <p>3 Q. Were you—</p> <p>4 A. I was just trying to figure out why</p> <p>5 there was a difference in price.</p> <p>6 Q. For whatever reason there is a</p> <p>7 difference in price?</p> <p>8 A. Yeah.</p> <p>9 Q. Now, up—do you know what this</p> <p>10 worksheet only document is, Exhibit 885?</p> <p>11 A. I have never seen it before.</p> <p>12 Q. Okay. How about the form itself as</p> <p>13 opposed to the form with this information or it?</p> <p>14 A. I have never seen this form before but</p> <p>15 it doesn't appear to be a form that would have</p> <p>16 been shared with the buyer because it states what</p> <p>17 Frontier's commission would be.</p> <p>18 Q. Okay. Is—do you have an opinion as to</p> <p>19 whether this is a Lifetime document or not?</p> <p>20 MR. SEARS: Objection. Calls for</p> <p>21 speculation.</p> <p>22 MR. KRESSIN: I just asked if she has</p> <p>23 an opinion. I didn't even ask what it was.</p> <p>24 MR. SEARS: And by its terms that</p> <p>25 question calls for speculation.</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Okay.</p> <p>2 Q. Are you familiar with this letter?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And it appears to be a letter</p> <p>5 authored by Vince Rhoton?</p> <p>6 A. Yes.</p> <p>7 Q. To Deanne Witt?</p> <p>8 A. Yes.</p> <p>9 Q. Deanne Witt is the same Deanne Witt we</p> <p>10 spoke about earlier?</p> <p>11 A. Yes.</p> <p>12 Q. Costco buyer?</p> <p>13 There are notes kind of all over this</p> <p>14 letter. Do you, do you know whose notes those</p> <p>15 are?</p> <p>16 A. Those are my notes.</p> <p>17 Q. Okay. And here we, we've got a</p> <p>18 reference to a, it says, "I appreciate the chance</p> <p>19 to meet with you. Our intent is to review the</p> <p>20 following," and then it says, the "present the</p> <p>21 DuraTable two-in-one table. This design is a</p> <p>22 possible solution to the "we need something</p> <p>23 different" problem. The table uses the same top</p> <p>24 and benches but incorporates removable bench</p> <p>25 frames to become both a utility and a picnic</p>

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<p style="text-align: right;">Page 133</p> <p>1 table."</p> <p>2 Have I read that accurately?</p> <p>3 A. Yes.</p> <p>4 Q. Now, what does that refer to?</p> <p>5 A. That's referring to the model, I</p> <p>6 believe it's 2150 that had the removable benches.</p> <p>7 Q. Okay. Did you show Deanne Witt a</p> <p>8 2150 at this time?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know when this meeting occurred?</p> <p>11 A. I believe it was the date of this</p> <p>12 letter, but I don't know for sure.</p> <p>13 Q. There is some notes at the top, it</p> <p>14 looks like 2150-166.00. What does that mean?</p> <p>15 A. That would be Costco's cost for the</p> <p>16 2150.</p> <p>17 Q. Okay. And then it says--looks like a</p> <p>18 line drawn down to that first bulleted paragraph</p> <p>19 says, "need firm," is that cost?</p> <p>20 A. Yeah, cost.</p> <p>21 Q. For this year?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. What does that mean?</p> <p>24 A. When we had our meeting with Deanne</p> <p>25 Witt, which is what this letter is referring to,</p>	<p style="text-align: right;">Page 135</p> <p>1 A. She wanted to try testing it against</p> <p>2 what her regular table sold.</p> <p>3 Q. Okay. So we are talking about test</p> <p>4 marketing the table?</p> <p>5 A. They would bring--they would pick six</p> <p>6 to ten of their stores, remove the regular product</p> <p>7 and put in a test product in its place just to</p> <p>8 gauge whether or not it sold as good or better.</p> <p>9 Q. Okay. So was that test marketing the</p> <p>10 product?</p> <p>11 A. I guess I don't like the word</p> <p>12 marketing. Marketing to me is all--</p> <p>13 Q. Okay.</p> <p>14 A. This is physically test, test sales.</p> <p>15 Q. Okay. So it's sales testing?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. Now, down, down under Mr.</p> <p>18 Rhoton's name and signature there is some other</p> <p>19 things that are kind of difficult to read. You</p> <p>20 see there is two lines and there is some writing</p> <p>21 between those two lines?</p> <p>22 A. Yeah. I have--I can barely make out my</p> <p>23 writing.</p> <p>24 Q. Okay.</p> <p>25 A. It says, "Other ideas from Deanne. One</p>
<p style="text-align: right;">Page 134</p> <p>1 we did not know what our cost was going to be.</p> <p>2 Q. Okay.</p> <p>3 A. So that was a note to myself during the</p> <p>4 meeting that we needed to get back to her with a</p> <p>5 cost.</p> <p>6 Q. Okay. And then it says something else</p> <p>7 and then it says, how many for this year?</p> <p>8 A. Well, it says how many per truck and</p> <p>9 then how many for this year. She would like to</p> <p>10 try it. Some notes I made to myself.</p> <p>11 Q. Okay. And what does that mean?</p> <p>12 A. She wanted to know what the truckload</p> <p>13 quantity would be for the product because it</p> <p>14 seemed to be a smaller, more compact unit than</p> <p>15 what she was carrying previously and she wanted to</p> <p>16 know how many we could produce if she wanted to</p> <p>17 try it on a test.</p> <p>18 Q. Did they in fact test it?</p> <p>19 A. No. They talked about testing it but</p> <p>20 they ran out of room for test product that year.</p> <p>21 Q. Okay. And so when she says she'd like</p> <p>22 to try it, that means Costco would like to try</p> <p>23 it?</p> <p>24 A. Yeah, she was</p> <p>25 Q. Try the product?</p>	<p style="text-align: right;">Page 136</p> <p>1 was a square table, what would we do with the</p> <p>2 other two benches. And she also liked the idea</p> <p>3 of a curved table."</p> <p>4 Q. Curved meaning what?</p> <p>5 A. Either oval-shaped or round.</p> <p>6 Q. Now, is this the first time that this</p> <p>7 square table and curved table were discussed?</p> <p>8 A. Yes.</p> <p>9 Q. Did you not tell me earlier that there</p> <p>10 was a square table discussed back in 1995?</p> <p>11 A. I believe I did. I, I think what I</p> <p>12 meant was when we get together with her we bounce</p> <p>13 ideas off. Every year she asks us how we can</p> <p>14 make some different--a different product for her</p> <p>15 than Sam's Club. So this is not the first time</p> <p>16 we have talked about it.</p> <p>17 Q. Do you all discuss what's being sold to</p> <p>18 Sam's?</p> <p>19 A. We discuss what Sam's is selling and</p> <p>20 what you can go to their store and see. We</p> <p>21 don't, we don't discuss what could potentially be</p> <p>22 sold there for future.</p> <p>23 Q. Okay. You discuss what Lifetime is</p> <p>24 selling--well, in this case, Lifetime is selling</p> <p>25 to Sam's, what products?</p>



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<p style="text-align: right;">Page 137</p> <p>1 A. As long as it's something that's 2 already on their floor for sale. 3 Q. Okay. But do you discuss, for 4 instance, would you have discussed with Sam's a 5 design for something, we need something different 6 problem? 7 A. No. 8 MR. SEARS: Objection. Vague. 9 BY MR. KRESSIN: 10 Q. Okay. So you would never discuss the 11 two-in-one table with Sam's? 12 A. I would never have discussed anything 13 with Sam's because I don't call on Sam's. Is 14 that what you mean? 15 Q. Well, I guess what I was asking, there 16 was an issue about Sam's and what was being sold 17 to Sam's. 18 A. Yes. 19 Q. And if this was something different. 20 My question is, is would you discuss with Costco 21 what was being sold to Sam's. And I understood 22 you to say that you discussed stuff that was out 23 where anybody could see it. 24 A. Right. 25 Q. But you wouldn't necessarily discuss</p>	<p style="text-align: right;">Page 139</p> <p>1 exclusive period of time if they decided to go 2 with a new product. 3 BY MR. KRESSIN: 4 Q. Okay. 5 A. And that would entice the buyer to give 6 us a positive decision. 7 Q. Okay. And in--did you tell me that, 8 that Costco never took you up--or took up Lifetime 9 on that idea of the two-in-one table? 10 A. They thought about it for a few months 11 and then they didn't have the room to test it and 12 then we brought it back again the following year 13 to talk about it again; she told us she didn't 14 want to do it at all because she didn't, after 15 she thought about it she didn't like the concept 16 of it becoming a utility table because then it 17 wouldn't be her, it wouldn't be her item that she 18 could purchase for lawn and garden any longer, it 19 would then go into a different department at 20 Costco. So she wanted to keep it clean and would 21 have the picnic table be a picnic table only. 22 Q. Okay. So if the benches were removed 23 it, it--or removable then the product went to a 24 different group at Costco? 25 A. There was another department, office</p>
<p style="text-align: right;">Page 138</p> <p>1 what other things you might be contemplating with 2 Sam's. 3 A. Correct. 4 Q. Okay. So is--or was this DuraTable's 5 two-in-one table something that was being offered 6 to other, you know, other buyers for, you know, 7 for their use or sales. 8 MR. SEARS: Objection. Lack of 9 foundation. 10 THE WITNESS: I don't know who else 11 they may have been showing that table to. Within 12 the wholesale club environment they were giving 13 Costco the first chance to accept that product and 14 if they didn't like it, then they would have the 15 choice to take it out to Sam's Club or BJ's, the 16 other two clubs. 17 BY MR. KRESSIN: 18 Q. Was that, was that something that 19 Lifetime did, was basically give Costco the first 20 chance at some of these products? 21 MR. SEARS: Objection. Lack of 22 foundation. Calls for speculation. 23 THE WITNESS: In the past that was the 24 typical thing that would happen, they would let 25 the buyers at Costco know they would have an</p>	<p style="text-align: right;">Page 140</p> <p>1 furniture, that bought banquet tables. 2 Q. Okay. And that's where this two-in-one 3 table would end up? 4 A. It may have. 5 Q. Okay. 6 A. There was no way of knowing what 7 management would rule on that. But she was 8 concerned that Costco management would come in and 9 say, this isn't a picnic table any longer because 10 it's also a banquet table, and she didn't want to 11 even have to have a differentiation between what 12 department it would go to. 13 MR. KRESSIN: Okay. I would ask 14 that be marked the next exhibit, 866, to her 15 deposition. 16 BY MR. KRESSIN 17 Q. Let me show you what's been identified 18 as STIV419. 19 A. Okay. 20 Q. Now, can you identify this document? 21 A. Yes. 22 Q. Have you seen it before? 23 A. Yes. 24 Q. When did you see it? 25 A. I saw it yesterday and I remember</p>



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<p style="text-align: right;">Page 141</p> <p>1 seeing this in the file as well. 2 Q. Okay. Is this an e-mail that you 3 drafted? 4 A. Yes. 5 Q. And it's sent to Vince Rhoton? 6 A. Yes. 7 Q. On January 29, 1997? 8 A. On the 28th. 9 Q. Okay. Was the meeting the 28th? 10 A. Yes. 11 Q. Was the e-mail dated January 29? 12 A. No, I believe it's-- 13 Q. Look at the very top heading. 14 A. Oh, it was. It was dated 1-29. I kept 15 seeing the 28. 16 Q. Okay. It, it appears to be a, a 17 memorandum authored on January 29, 1997 about a 18 meeting that occurred on January 28, 1997, to me. 19 A. Yes, you are correct. 20 Q. Okay. Was this, this--were these your 21 notes that were taken at the time of the meeting? 22 A. Yes. This was basically taking my 23 handwritten notes from this page and--from 866. 24 Q. Okay. Thank you. 25 A. --and putting it onto an e-mail form so</p>	<p style="text-align: right;">Page 143</p> <p>1 A. (Witness nods head.) 2 Q. Did Frontier Northwest only have one 3 2150? 4 A. Yes. 5 Q. Do you know what happened to that 2150 6 after you--or after Frontier Northwest sent it 7 back to Lifetime? 8 A. No. 9 Q. I would ask that be made the next 10 Exhibit, 893. 11 Exhibit-893 marked 12 Earlier this morning I think you 13 mentioned sending this 2150 back to Lifetime. Is 14 that right? 15 A. Yeah. 16 Q. As this day has progressed do you 17 recall when that was done? 18 A. I believe it was within the last two 19 years. 20 Q. Okay. Do you remember who it was sent 21 back to? 22 A. Vince asked me to send it back to one 23 of the, one of the engineers. I'm not sure 24 which--what the name was of the person. 25 Q. Okay. You don't, did you say that you</p>
<p style="text-align: right;">Page 142</p> <p>1 that people could read them. 2 Q. Okay. It says, Deanne--going down 3 there under the two-in-one table, number 2150. 4 A. Yes. 5 Q. It says, "Deanne liked the concept and 6 is--or is that supposed to be and is? 7 A. That's supposed to be and is. 8 Q. --interested in testing it this year." 9 A. Uh-huh. 10 Q. Is that what you were referring to 11 earlier, talking about the test sales? 12 A. Yes. 13 Q. And then it says, "She needs a price, 14 truckload quantity and capacity for this year"? 15 A. Yes. 16 Q. "She also needs some other information 17 as well." 18 The various discussions here, did they 19 relate to a 2150 that you had actually shown her 20 at this meeting? 21 A. Yes. 22 Q. Is this the 2150 sample that you sent-- 23 or Frontier Northwest sent back to Lifetime-- 24 A. Yes. 25 Q. --that you mentioned earlier?</p>	<p style="text-align: right;">Page 144</p> <p>1 think that Frontier Northwest still has documents 2 that would show that shipment? 3 A. I believe so. I, I think those are 4 still in the file. 5 Q. Okay. Let me show you a document 6 that's been marked as Exhibit 867. Have you seen 7 this before? 8 A. Yes. 9 Q. Okay. When did you see it? 10 A. When I originally received it from 11 Vince, and I saw it yesterday too. 12 Q. Okay. Now, is this a report that 13 appears to be authored by Vince Rhoton? 14 A. Yes. 15 Q. Does this refer to the same meeting as 16 your, your notes? 17 A. Yes, it does. 18 MR. SEARS: Objection. Lack of 19 foundation. 20 BY MR. KRESSIN: 21 Q. It says that Steve Nye and I met with 22 Deanne Witt and then so forth and so on. Do you 23 remember Steve Nye being there at the meeting? 24 A. Yes. 25 Q. Was the 2150 sent to Frontier Northwest</p>



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<p style="text-align: right;">Page 145</p> <p>1 to take to this meeting?</p> <p>2 A. Yes.</p> <p>3 Q. When we're talking about tables anyway</p> <p>4 and samples are going to be shown to customers,</p> <p>5 and Frontier Northwest is the representative, is</p> <p>6 it the custom to send the sample to Frontier</p> <p>7 Northwest?</p> <p>8 A. Yes.</p> <p>9 Q. It says here, "The second thing"--</p> <p>10 looking at the third paragraph--"the second thing</p> <p>11 we discussed with her was the 2150. We showed it</p> <p>12 to her and she caught on to the dual use</p> <p>13 immediately and seemed to like it. We downplayed</p> <p>14 it as an item for this year," said--"and said</p> <p>15 that the high cost was high and availability very</p> <p>16 low. Still it attracted her attention as an item</p> <p>17 different from Sam's."</p> <p>18 Now, what does the last sentence mean,</p> <p>19 still it attracted her attention as an item</p> <p>20 different from Sam's?</p> <p>21 MR. SEARS: Objection. Lack of</p> <p>22 foundation. Calls for speculation.</p> <p>23 THE WITNESS: The conversations that I</p> <p>24 had had with Deanne, she was consumed with wanting</p> <p>25 to have an item that was completely different than</p>	<p style="text-align: right;">Page 147</p> <p>1 Lifetime's?</p> <p>2 A. There was--</p> <p>3 MR. SEARS: Object. Sorry. Lack of</p> <p>4 foundation.</p> <p>5 THE WITNESS: There was--I think in '96</p> <p>6 they bought a table from a different manufacturer</p> <p>7 other than Lifetime.</p> <p>8 BY MR. KRESSIN:</p> <p>9 Q. Do you know who it was?</p> <p>10 A. Step 2.</p> <p>11 Q. Okay.</p> <p>12 A. It's a blow-molded picnic table that's</p> <p>13 all plastic.</p> <p>14 Q. No metal frame?</p> <p>15 A. No.</p> <p>16 Q. It says, Steve asked her about new</p> <p>17 products.</p> <p>18 What, do you know what that refers to,</p> <p>19 based on your having been at the meeting?</p> <p>20 A. I'm not sure if he's referring to Steve</p> <p>21 Nye or Steve Wohlwend because they were both</p> <p>22 there.</p> <p>23 Q. Okay. Well, it says one of the Steves</p> <p>24 asked her about new products. Why would one of</p> <p>25 the Steves be asking her about new products, if</p>
<p style="text-align: right;">Page 146</p> <p>1 Sam's Club was carrying and she, it appealed to</p> <p>2 her to have an item that would be drastically</p> <p>3 different.</p> <p>4 BY MR. KRESSIN:</p> <p>5 Q. Okay. Did she ask you whether Sam's</p> <p>6 was going to be carrying a 2150?</p> <p>7 A. She only asked if we would give her an</p> <p>8 exclusive if she bought it.</p> <p>9 Q. Okay. Is that how we end up with it</p> <p>10 attracted her as an item different from Sam's?</p> <p>11 A. Yes.</p> <p>12 MR. SEARS: Objection. Lack of</p> <p>13 foundation. Calls for speculation.</p> <p>14 BY MR. KRESSIN:</p> <p>15 Q. Now, the next thing down, it says,</p> <p>16 "Steve emphasized to Deanne that we have missed</p> <p>17 having them as an account and Deanne seemed to be</p> <p>18 an ally of Lifetime."</p> <p>19 What does that refer to?</p> <p>20 MR. SEARS: Same objections. Lack of</p> <p>21 foundation. Calls for speculation.</p> <p>22 THE WITNESS: I don't recall that part</p> <p>23 about the meeting.</p> <p>24 BY MR. KRESSIN:</p> <p>25 Q. Had Costco not been an account of</p>	<p style="text-align: right;">Page 148</p> <p>1 that happened?</p> <p>2 MR. SEARS: Objection. Calls for</p> <p>3 speculation. Lack of foundation.</p> <p>4 THE WITNESS: What I remember from the</p> <p>5 meeting was that we were doing some brainstorming</p> <p>6 on how to create a product that would be her own.</p> <p>7 BY MR. KRESSIN:</p> <p>8 Q. Okay.</p> <p>9 A. And she brought up the idea of making</p> <p>10 the table square rather than rectangle-shaped.</p> <p>11 Q. In the latter part it says, "My feeling</p> <p>12 is that if we come up with the right product</p> <p>13 (remembering to balance against Sam's) we will be</p> <p>14 back in the next season."</p> <p>15 Do you know what that refers to?</p> <p>16 MR. SEARS: Objection. Lack of</p> <p>17 foundation. Calls for speculation.</p> <p>18 THE WITNESS: I'm not remembering all</p> <p>19 the dates precisely but there was one year that</p> <p>20 she didn't buy from us so it must have been the</p> <p>21 year that started in December of '96 through</p> <p>22 August of '97, from the way that that statement</p> <p>23 is written.</p> <p>24 BY MR. KRESSIN:</p> <p>25 Q. Okay. Now--and then down below it says</p>

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<p style="text-align: right;">Page 149</p> <p>1 overflow headers. Do you have any idea what that 2 means? 3 A. (Witness shakes head.) 4 Q. Okay. 5 A. No idea. 6 Q. And it says Barry Mower and that's the 7 owner of Lifetime? 8 MR. SEARS: Same--lack of foundation. 9 Calls for speculation. 10 BY MR. KRESSIN: 11 Q. Would you speculate as to whether Barry 12 Mower is the owner of Lifetime? 13 A. I have had rumors about of that. 14 MR. SEARS: Are you talking about Barry 15 Mower or the particular individual identified on 16 this document. 17 BY MR. KRESSIN: 18 Q. Do you know any other Barry Mowers? 19 A. I know only one Barry Mower and he 20 works for Lifetime. I know that much. 21 Q. And then your name. Bryce Smith. Who 22 is Bryce Smith? 23 A. I don't know him. 24 Q. Carl Stanford? 25 A. I don't know him either.</p>	<p style="text-align: right;">Page 151</p> <p>1 Q. Aaron Hill? 2 A. I do know Aaron. 3 Q. Okay. How do you know Aaron? 4 A. He was--he has been in a couple 5 different capacities at Lifetime. He has been 6 head of marketing and he has been over 7 international sales. 8 Q. Okay. Bill Curtis we have talked 9 about. 10 A. Yeah, I know Bill. 11 Q. Brent Allen? 12 A. I know Brent. 13 Q. Okay. Who is Brent? 14 A. I don't know what his title is. I've 15 always thought of him as being the number two 16 person at Lifetime. 17 Q. Okay. Dave Thomley? 18 A. I know Dave. 19 Q. Who is Dave? 20 A. Dave was a salesman up until a couple 21 years ago for basketball. 22 Q. Okay. Do you know if he is still with 23 Lifetime or not? 24 A. He's not. 25 Q. Okay. Do you know where he is?</p>
<p style="text-align: right;">Page 150</p> <p>1 Q. Clint Morris, I think we have talked 2 about earlier. 3 A. Yes, I know Clint. 4 Q. Colette Bullard? 5 A. I don't know her. 6 Q. Devin--pardon? 7 A. I don't know if that's a man or a 8 female. Colette. Must be a female. 9 Q. I don't know. 10 Devin Foster? 11 A. I have heard that name, Devin Foster, 12 before, but I don't know him. 13 Q. Where--in what context have you heard 14 of his name? 15 A. Conversations with Vince, he has 16 brought that name up before. 17 Q. Jonathan Hartsgrrove? 18 A. I don't know him. 19 Q. Michelle Winter? 20 A. I don't know her. 21 Q. Stephen Nye? 22 A. Steve I do know. 23 Q. You know him. 24 Steve John? 25 A. I don't know him.</p>	<p style="text-align: right;">Page 152</p> <p>1 A. He works for TerraStar Corporation. 2 Q. TerraStar? 3 A. TerraStar. 4 Q. What's TerraStar do? 5 A. They have a lot of different items that 6 are as-seen-on-TV type items, things from Golf-- 7 let's see. Golf swing--I don't know what they 8 are called but they for making your golf game 9 better to smoothie makers to all, anything they 10 can get their hands on. 11 Q. Okay. 12 A. Selling the products. 13 Q. Sounds like they are probably not a 14 competitor. 15 A. No, definitely not. 16 Q. Dave Winter? 17 A. I know Dave. He has always been in the 18 manufacturing end of Lifetime. 19 Q. Okay. Do you know what his capacity-- 20 or do you have an understanding as to what his 21 capacity is at Lifetime? 22 A. I'm not positive. He has always been 23 with our group when we've done factory tours but 24 I don't know what segment exactly he's over. 25 Q. Did he attend any of these, these</p>



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<p style="text-align: right;">Page 153</p> <p>1 meetings that you have once or twice a year with 2 Lifetime? 3 A. The internal meetings with Lifetime, he 4 would be there. 5 Q. Okay. Mark Whiting? 6 A. Yes, I know Mark. 7 Q. Okay. What's-- 8 A. I believe he is head of accounting for 9 Lifetime. 10 Q. Kevin Bingham? 11 A. Kevin was sales, head of sales, I 12 believe, for Wal-Mart and Sam's. He is now 13 deceased. 14 Q. Was Mr. Whiting in the brainstorming 15 meetings? 16 A. I don't believe he was. 17 Q. Okay. What about Mr. Bingham? 18 A. Kevin would be, Kevin Bingham would be 19 at the meetings. 20 Q. Okay. And Richard Hendrickson? 21 A. I know him. 22 Q. How do you know Richard? 23 A. He has been in sales for, with 24 basketball for as long as I've worked with 25 Lifetime.</p>	<p style="text-align: right;">Page 155</p> <p>1 to the January meeting? 2 A. Yes. 3 Q. Now, this says, we have a production-- 4 I'm sorry. Excuse me. We will have a production 5 sample of this item in about two weeks. 6 A. That's what it says. 7 Q. Did you ever get a production sample? 8 A. No. 9 Q. Were you aware that a number of 2150 10 tables were sold? 11 MR. SEARS: Objection. Assumes facts 12 not in evidence. 13 THE WITNESS: I was never aware of 14 anything ever going into production. I thought I 15 had the sole single table that was ever made just 16 as a prototype. 17 BY MR. KRESSIN: 18 Q. Okay. What made you think that? 19 A. Conversations that I had with Vince. 20 And waiting for the production sample to come, he 21 explained to me that they were having problems 22 trying to put it into production because of the 23 square tubing. 24 Q. I think you said that Costco never, 25 never opted to test sell it.</p>
<p style="text-align: right;">Page 154</p> <p>1 Q. Was he involved in these meetings? 2 A. Yes. 3 Q. Summer Green? 4 A. Summer is assistant to Vince and right 5 now she is over table, category tables and chairs. 6 Q. Okay. In the manufacturing or sales? 7 A. No, in sales. 8 Q. Sales, okay. 9 I am going to ask that be made an 10 exhibit to her testimony, please. 11 Let me show you what's been marked as 12 Exhibit 869. Ask if you can identify that. 13 A. Okay. 14 Q. Have you seen this before? 15 A. Yes. 16 Q. What is it? 17 A. This is a memo I drafted to the 18 assistant buyer, to Deanne Witt, at Costco trying 19 to push them forward into doing a test on the 20 2150. 21 Q. Okay. Now, I think your sentence was 22 accurate but you are saying Scott Hines is Deanne 23 Witt's assistant? 24 A. Assistant buyer, yes. 25 Q. Okay. This was, was this a follow-up</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Right. 2 Q. Now, I think you said that the 2150 3 that you had you sent back to Lifetime. Is that 4 right? 5 A. Yes. 6 Q. And was that on, on a request made by 7 Mr. Rhoton? 8 A. No, that was on my request. 9 Q. Okay. What do you mean, your request? 10 A. Kim Thomas, who was the buyer at the 11 time, and still is the buyer today, she was 12 still--again, looking for a new item that would 13 differentiate their product from Sam's and that 14 was the best idea I had come up with is, Why 15 don't we try to do a table like that? And in 16 those discussions we decided to have that table 17 sent down so the engineers could take a look at 18 it and see if there was a way to make it work. 19 Q. So--you used some pronouns and I am 20 just trying to follow who they and we and so 21 forth-- 22 A. Okay. 23 Q. You said that somebody, somebody still 24 wanted a different product? 25 A. Costco buyers still wanted a different</p>



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<p style="text-align: right;">Page 157</p> <p>1 product.</p> <p>2 Q. What time frame are we in?</p> <p>3 A. 1999.</p> <p>4 Q. Okay.</p> <p>5 A. Maybe 2000.</p> <p>6 Q. Okay. And so you, you called somebody</p> <p>7 at Lifetime to inquire about whether they could</p> <p>8 make something like a 2150? I'm not trying to</p> <p>9 put words in your mouth, I am just trying to</p> <p>10 follow what you were saying.</p> <p>11 A. I believe Bill Curtis was the sales</p> <p>12 manager at the time for picnic tables and he</p> <p>13 couldn't remember what that table looked like or</p> <p>14 what it did.</p> <p>15 Q. Okay.</p> <p>16 A. So I offered to send them the table</p> <p>17 that I had so he could get an idea of what I was</p> <p>18 talking about.</p> <p>19 Q. So you sent it to Bill Curtis?</p> <p>20 A. I don't think it was sent to Bill</p> <p>21 Curtis. He had me send it to someone else's</p> <p>22 attention that worked out in the production</p> <p>23 facility.</p> <p>24 Q. Okay. Whatever came of that?</p> <p>25 A. Nothing.</p>	<p style="text-align: right;">Page 159</p> <p>1 exhibit to her testimony, 869. Let me swap with</p> <p>2 you.</p> <p>3 I have put in front of you a document</p> <p>4 that's identified as STIV447, STIV445, and</p> <p>5 STIV446.</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 (Discussion off the record.)</p> <p>9 And is it labeled collectively as</p> <p>10 Exhibit 885 on the front?</p> <p>11 A. I've got 885, then 865.</p> <p>12 Q. Okay. So STIV445 is labeled 865?</p> <p>13 A. Yes.</p> <p>14 Q. Looking at, looking at the front page</p> <p>15 of the document identified as STIV447, do you</p> <p>16 recognize that?</p> <p>17 A. Yes.</p> <p>18 Q. And what is that, please.</p> <p>19 A. These are my meeting notes from April</p> <p>20 30 with Costco.</p> <p>21 Q. Okay. And was this a meeting that</p> <p>22 occurred on April 30, 1997?</p> <p>23 A. Yes.</p> <p>24 Q. So the notes were written essentially</p> <p>25 the same day this time?</p>
<p style="text-align: right;">Page 158</p> <p>1 Q. Okay. You are still waiting?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay.</p> <p>4 A. I have told them a couple times I want</p> <p>5 it back and they haven't sent it back to me</p> <p>6 but . . .</p> <p>7 Q. You have asked for the 2150 back?</p> <p>8 A. Just jokingly.</p> <p>9 Q. Okay. Now, looking over on the third</p> <p>10 page of Exhibit 869, as well as the fourth page</p> <p>11 of Exhibit 869, is that an image of the 2150?</p> <p>12 MR. SEARS: Counsel, just so that it,</p> <p>13 the record's clear, I just want to make--excuse</p> <p>14 me. I want to make sure I have a correct copy of</p> <p>15 this. I have got STIV 439, 440, 441 and then it</p> <p>16 jumps to 455. Is that right?</p> <p>17 MR. KRESSIN: That's right.</p> <p>18 MR. SEARS: Okay.</p> <p>19 THE WITNESS: The sales sheet says that</p> <p>20 it's the 2150.</p> <p>21 BY MR. KRESSIN:</p> <p>22 Q. Okay. Does that image look like the</p> <p>23 2150 that you had?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. I would ask that be made an</p>	<p style="text-align: right;">Page 160</p> <p>1 A. Yes.</p> <p>2 Q. Now, there is a reference to, you know,</p> <p>3 the attendees and so forth, but then it references</p> <p>4 the DuraTable two-in-one 2150. And then it has</p> <p>5 quoted costs on there. Is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. It says, "Deanne was thrilled</p> <p>8 with the new lower cost. We originally quoted</p> <p>9 her \$166 each FOB Clearfield"?</p> <p>10 A. Yes.</p> <p>11 Q. And now you've gotten the price down</p> <p>12 \$21? Is that right?</p> <p>13 A. Yes.</p> <p>14 MR. SEARS: Counsel, just for clarity;</p> <p>15 when you are asking if that's correct, you are</p> <p>16 asking if you have read the document correctly?</p> <p>17 MR. KRESSIN: Yes.</p> <p>18 MR. SEARS: Okay.</p> <p>19 BY MR. KRESSIN:</p> <p>20 Q. Okay. There is a reference here to</p> <p>21 Ellen Haertl?</p> <p>22 A. Haertl.</p> <p>23 Q. Who is Ellen Haertl?</p> <p>24 A. She at the time was head of the, a</p> <p>25 freight department that analyzed freight, loading</p>



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Deposition of Mary Jackson, 2/3/2004

<p style="text-align: right;">Page 161</p> <p>1 trucks, trying to get lower costs per unit in 2 freight values. 3 Q. Okay. Is she kind of the penny- 4 pincher, the bean counter? 5 A. Yes. 6 Q. Okay. Then there is a, there is a note 7 here, what colors are available for a test or for 8 a roll-out. Is that right? 9 A. Yes. 10 Q. What--were you ever told what colors 11 were available? 12 A. I don't remember. 13 Q. Pardon? 14 A. I don't remember if we ever got to that 15 point. 16 Q. Now, it says, "Deanne was pleased to 17 hear that we had reserved this item for Costco." 18 Is that right? 19 A. Yes. 20 Q. That's what it says, I mean. 21 A. Yes. 22 Q. Is, is this what you were referring to 23 earlier where, where you would give someone like 24 Costco the right to sell it, sell the product, in 25 this case the 2150, for some period of time</p>	<p style="text-align: right;">Page 163</p> <p>1 BY MR. KRESSIN: 2 Q. If you could legally. 3 A. I don't know. 4 MR. SEARS: Objection. Calls for a 5 legal conclusion. 6 BY MR. KRESSIN: 7 Q. It says, I told her that Costco would 8 be the only wholesale club with the table. Is 9 that right? 10 A. Yes. 11 Q. That's what this says? 12 A. Yes. 13 Q. It says, "She is also concerned about 14 Home Depot (FYI)." 15 Now, what was her concern about Home 16 Depot? 17 A. Home Depot was starting to carry picnic 18 tables and they were matching or going lower than 19 Costco's prices. 20 Q. Okay. What does the FYI mean? 21 A. Just for your information. 22 Q. Okay. 23 A. Normally Home Depot would not be a 24 concern to her but she had been getting a lot of 25 pressure around this time.</p>
<p style="text-align: right;">Page 162</p> <p>1 before others have it? 2 A. Yes. 3 Q. Is that in writing anywhere? 4 A. No, it's all verbal. 5 Q. The fact that you tell her that, could 6 you or would--well, could you have sold the 2150 7 to someone else during this period of time? I'm 8 not talking about the fact that your reputation 9 would be shot, I am just talking about could you 10 legally do it? 11 MR. SEARS: Objection. Calls for a 12 legal conclusion. 13 THE WITNESS: I don't know what the 14 legalities are of that. 15 BY MR. KRESSIN: 16 Q. Okay. Do you have an understanding as 17 to whether you could have gone to someone else 18 and, and essentially sold them the 2150 in spite 19 of telling Costco that they would be an exclusive? 20 A. I would be risking my career if I did 21 that. 22 Q. I understand. I understand. But do 23 you know if you could do it? 24 MR. SEARS: And here you are talking 25 could legally, could, has the physical capability?</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Do you know if the 2150 was ever 2 offered to anyone other than Costco? 3 A. I remember seeing the memo to Eagle 4 Hardware. 5 Q. Okay. Is Eagle Hardware a wholesale 6 club? 7 A. No. 8 Q. Sam's is? 9 A. Yes. 10 Q. Was it ever offered to Sam's? 11 A. I don't know. 12 MR. SEARS: Objection. Vague as to 13 offer. 14 BY MR. KRESSIN: 15 Q. Now, it goes on and talks about 16 packaging and slash POP, or p-o-p. Does p-o-p or 17 POP have, is that an acronym for something? 18 A. Yes. 19 Q. What is it? 20 A. That's point of purchase. 21 Q. Okay. 22 A. And that refers to display signs that 23 would be out in the store. 24 Q. Okay. It says here, please review the 25 enclosed point of purchase card for suggested.</p>



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<p style="text-align: right;">Page 165</p> <p>1 changed.</p> <p>2 Now, were these suggested changes that,</p> <p>3 that you made to point of purchase cards?</p> <p>4 A. I don't remember what I sent to him at</p> <p>5 this time.</p> <p>6 Q. Okay. Do you know what activity this</p> <p>7 is referring to?</p> <p>8 A. Well, it's referring to when I met with</p> <p>9 Deanne on this day. We were looking at the</p> <p>10 current point of purchase display and we were</p> <p>11 recommending some changes to that and I wrote</p> <p>12 those changes on that, sent it, but I don't</p> <p>13 recall what the changes were going to be.</p> <p>14 Q. Okay. So you, you showed her, showed</p> <p>15 her, Deanne, a point of purchase card?</p> <p>16 A. Yes.</p> <p>17 Q. Can you describe what the point of</p> <p>18 purchase card--well, first of all, tell me what it</p> <p>19 is.</p> <p>20 A. At this time it was like a tent that</p> <p>21 would just sit on top of a table that was out on</p> <p>22 the display floor. And there's other items like</p> <p>23 this at Costco where they'll be bigger signs and</p> <p>24 smaller signs and it's a way to draw the retail</p> <p>25 consumer into taking another look at what that</p>	<p style="text-align: right;">Page 167</p> <p>1 A. Right, but the point of purchase card</p> <p>2 that I'm talking about is, this is the development</p> <p>3 of what would eventually be for the 2150. What I</p> <p>4 was working with would have been one that already</p> <p>5 existed from one of the other products in the</p> <p>6 line.</p> <p>7 Q. And down here at the bottom it says,</p> <p>8 "Vince, I would like to wrap the program up early</p> <p>9 next week so we can start shipping some tables."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And, again, that's talking about</p> <p>13 shipping 2150s?</p> <p>14 A. Yes.</p> <p>15 Q. And was this program wrapped up so that</p> <p>16 you could start shipping tables?</p> <p>17 A. No.</p> <p>18 Q. And what happened?</p> <p>19 A. From what I remember, they couldn't</p> <p>20 figure out how to produce the table at the</p> <p>21 pricing that they offered and also they were</p> <p>22 having problems with the square tubing not working</p> <p>23 out the way they had hoped in production.</p> <p>24 Q. Okay. You talk about your biggest</p> <p>25 obstacle will be getting Ellen to approve the item</p>
<p style="text-align: right;">Page 166</p> <p>1 product is and giving them some features and</p> <p>2 benefits of the product.</p> <p>3 Q. Okay. So you showed her some point of</p> <p>4 purchase cards? Is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Where did you get the point of purchase</p> <p>7 cards?</p> <p>8 A. They were the--would have been the</p> <p>9 standard point of purchase cards that we used on</p> <p>10 other tables that were in the line.</p> <p>11 Q. Okay. Did it have a 2150 on the, on</p> <p>12 the point of purchase card?</p> <p>13 A. No.</p> <p>14 Q. Are you sure?</p> <p>15 A. Yeah.</p> <p>16 Q. Did you ever see a point of purchase</p> <p>17 card with a 2150 on it?</p> <p>18 A. I don't believe I ever saw one.</p> <p>19 Q. Okay. This, this point of purchase</p> <p>20 card, this POP, was for the 2150, though, was it</p> <p>21 not?</p> <p>22 A. It would have been.</p> <p>23 Q. Okay. I mean, that's what this</p> <p>24 discussion is about referenced in this Exhibit</p> <p>25 885.</p>	<p style="text-align: right;">Page 168</p> <p>1 in the freight department. Was this, was that</p> <p>2 Ellen Haertl?</p> <p>3 A. Haertl, yes.</p> <p>4 Q. Did Ellen approve it?</p> <p>5 A. I don't remember if she ever got that</p> <p>6 far.</p> <p>7 Q. Okay. Now, under this heading</p> <p>8 freight--do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. --it says, the third bullet is how many</p> <p>11 units will fit on a 50, and then a single quote,</p> <p>12 and a set of doubles, question mark, double-</p> <p>13 stacked, question mark.</p> <p>14 Now, what, first of all, what does that</p> <p>15 first inquiry refer to?</p> <p>16 A. That's referring to a 53-foot truck.</p> <p>17 And then the second thing is a set of doubles,</p> <p>18 which would be, I think it's two 20-foot trucks</p> <p>19 that are linked together.</p> <p>20 Q. Okay.</p> <p>21 A. And then--</p> <p>22 Q. Excuse me. Go ahead.</p> <p>23 A. And then double-stacked would be</p> <p>24 putting two pallets together on a truck to load</p> <p>25 the product on.</p>



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<p style="text-align: right;">Page 169</p> <p>1 Q. You said a 53-foot truck. Would that 2 be a trailer? 3 A. Yes. 4 Q. And the set of doubles is tandem 5 trailers? 6 A. Yes. 7 Q. What was the, what was the concern 8 about double-stacking? 9 A. There was either a weight issue that it 10 would be too heavy for the trailer or—and also 11 it could be that there was a concern about 12 product being damaged at the bottom of the stack 13 with that much weight in the stack. 14 Q. Well, the reason I ask that is because 15 in the sentence before, the bullet before, the 16 second sentence is, Can the product be double- 17 stacked? 18 A. Yeah. 19 Q. And—but you are saying both of those 20 refer to damage from double-stacking? 21 A. I—when I wrote this I didn't realize— 22 I stated the same question twice. 23 MR. KRESSIN: Okay. I would ask that 24 Exhibit 885 be made an exhibit to her testimony. 25 (Discussion off the record.)</p>	<p style="text-align: right;">Page 171</p> <p>1 A. The fax header says it came from Design 2 One. 3 Q. And do you know if there is any 4 relationship between Design One and a company 5 called Forthgear? 6 A. No, I never heard that name. 7 Q. Okay. It says here that, on this that 8 this is the direction we are going with the label 9 and the POP. POP, is that the point of purchase 10 thing? 11 A. Yes, it's point of purchase. 12 Q. Do you know who Design One is? 13 A. No. 14 Q. Flipping over to STIV450. 15 A. Okay. 16 Q. There is a note down there that says 17 new photo. 18 A. Yes. 19 Q. Do you have any idea what that refers 20 to? 21 A. I'm just reading. It says, "New photo 22 will replace old one. No gap between bench and 23 top." 24 Q. Okay. Now, the, the next page refers 25 to a display?</p>
<p style="text-align: right;">Page 170</p> <p>1 BY MR. KRESSIN: 2 Let me ask you to look at a document 3 that's been identified—or—yeah, identified as 4 STIV471, STIV470 and STIV449 and STIV450 and 5 STIV451, as well as a large color, appears to be 6 a colorization of STIV451. 7 MR. SEARS: Just for the record we 8 agree that the colorization that you just 9 referenced will be designated confidential, 10 outside counsel eyes only. 11 MR. KRESSIN: Okay. 12 BY MR. KRESSIN: 13 Q. Have you had an opportunity to look at 14 that or— 15 A. Yeah. 16 Q. Are you still looking? Okay. 17 Can you, can you identify these, these 18 pages or documents? 19 A. I don't remember seeing this before 20 yesterday, but it looks like it did come from my 21 office. 22 Q. Did it come from your office or was it 23 faxed to your office? 24 A. It was faxed to my office. 25 Q. Okay. Can you tell where it came from?</p>	<p style="text-align: right;">Page 172</p> <p>1 A. That's what it says. 2 Q. Now, is this, is this a POP? 3 A. Yes, that would be referring to a point 4 of purchase display. 5 Q. And this is the little triangular or 6 teepee-shaped or tent-shaped label we were 7 referring to? 8 A. Yes. 9 Q. Now, is this, is this the POP or 10 display that you were referring to earlier or that 11 was referred to earlier in this Exhibit 885? 12 A. The one referred to in 885 was my notes 13 on a current point of purchase display and how 14 the buyer wanted it changed. 15 This one, 451, is referring to taking 16 those design ideas and putting them in another 17 format. 18 Q. Okay. Do you know if Design One is an 19 advertising agency of any sort? 20 A. I don't know. 21 Q. And have you ever seen this 22 colorization? 23 A. I don't remember seeing this before. 24 Q. Did this—this image that's now nice 25 and big and bright that's shown in this</p>



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<p style="text-align: right;">Page 173</p> <p>1 colorization, is that, is that the 20—or is that  2 a table that's similar to the 2150 you have?  3 A. It looks very similar to the 2150 I  4 have.  5 Q. Are there any differences?  6 A. I had some scratches on the top of mine  7 that aren't in this picture.  8 Q. Okay. Anything else?  9 A. That's the only difference.  10 Q. Was that the, was the concept of this,  11 of this product to make it both a utility table  12 and a picnic table?  13 MR. SEARS: Objection. Lack of  14 foundation.  15 THE WITNESS: I was only selling this  16 table as a picnic table because that was who my  17 buyer was for it. She liked the idea it being  18 more compact but didn't like the idea of it being  19 a banquet table on its own for the same reasons I  20 said before, that it would go into a different  21 department.  22 BY MR. KRESSIN:  23 Q. I notice that on this large one some of  24 these instructions appear to be in French.  25 A. Yes.</p>	<p style="text-align: right;">Page 175</p> <p>1 that, please. Have you seen this document before?  2 A. Yes, a long time ago.  3 Q. Okay. Let me just—for the record,  4 it's identified as STIV452 through STIV454, three  5 pages.  6 Does that have an exhibit number on the  7 front?  8 A. 886.  9 Q. Thank you.  10 Can you tell me what that is?  11 A. It's a truck loading pattern for a  12 picnic table, it appears.  13 Q. Tell me what it's for.  14 A. I can't—  15 Q. What kind of table? Excuse me.  16 A. I can't be certain if this was the  17 standard table that we had been selling Costco in  18 the past or if this was the 2150 because it  19 doesn't say.  20 Q. Does it say it's a picnic table  21 anywhere?  22 A. No, it does not.  23 Q. Did he ever tell you who the engineer  24 was that, that he appears to have discussed this  25 loading issue with?</p>
<p style="text-align: right;">Page 174</p> <p>1 Q. And maybe some in Spanish?  2 MR. SEARS: Objection. Lack of  3 foundation.  4 THE WITNESS: Seventh grade Spanish  5 tells me that some of this is probably Spanish.  6 MR. KRESSIN: Okay.  7 MR. SEARS: Lack of foundation. If you  8 don't know, if he hasn't established that there is  9 a reason that you would know.  10 BY MR. KRESSIN:  11 Q. Assuming for the moment that some of  12 these language was in French, do you have any,  13 any idea as to why it would be in French?  14 MR. SEARS: Objection. Calls for  15 speculation.  16 THE WITNESS: In the past we had been  17 selling the same table to Costco US as Costco  18 Canada and Costco Canada required the French  19 labeling.  20 MR. KRESSIN: Okay. I just ask that  21 that be made the next exhibit to her testimony.  22 Exhibit-894 marked  23 BY MR. KRESSIN:  24 Q. I am going to show you what's been  25 marked as Exhibit 886 and ask if you can identify</p>	<p style="text-align: right;">Page 176</p> <p>1 A. No. I never got a name.  2 Q. Let's mark that the next exhibit to her  3 testimony.  4 Let me show you a document that's been  5 identified as STIV488. Can you identify that?  6 A. These are my meeting notes from the  7 meeting in July of '97.  8 Q. Okay. Is this a Costco meeting?  9 A. Yes.  10 Q. Where did—ouch. Excuse me.  11 Where did it occur?  12 A. At Costco's headquarters.  13 Q. How can you tell it was at Costco's  14 headquarters?  15 A. I wrote at the top who was in  16 attendance and because Deanne and Scott were at  17 the meeting I know it was there at their office.  18 Q. Do they ever come to your offices?  19 A. No.  20 Q. Down here in the second paragraph or so  21 it says, prototype table with detached benches  22 should be the same price as the 2101.  23 A. Yes.  24 Q. What does that mean?  25 A. That—Deanne told me that her feeling</p>



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<p style="text-align: right;">Page 177</p> <p>1 was that she should be able to get the detachable  2 bench table for the same price as the standard  3 eight-person table, which was the 2101. She  4 couldn't understand why it was more expensive.  5 Q. Okay. Did you explain it to her?  6 A. I tried to.  7 Q. What did you tell her?  8 A. I was told that there was more steel in  9 the 2150, which raised the price of the table,  10 and it was substantially more expensive to  11 manufacture because of the square tubing.  12 Q. And below that it says "IA." Is that  13 shows?  14 A. That's item agreement. Shorthand.  15 Q. Item agreement, and then I can't read  16 the next word. What's that?  17 A. Well, what it--what I meant to say is  18 item agreement from '97 shows 127.15 cost not  19 127.50.  20 Q. Okay.  21 A. There was some confusion during this  22 meeting about what their cost was last time they  23 bought tables from us.  24 Q. Now, is that an item agreement on the  25 2150?</p>	<p style="text-align: right;">Page 179</p> <p>1 BY MR. KRESSIN:  2 Q. What was the call about?  3 MR. SEARS: Objection. Lacks  4 foundation. Calls for speculation.  5 THE WITNESS: I can't remember exactly  6 what he was supposed to call her about but I  7 would guess that it was the items that I have  8 starred here.  9 BY MR. KRESSIN:  10 Q. Okay.  11 A. The different colors, if he was able to  12 put a speckle into the Sandy beige color or not  13 and the UV questions that came up.  14 Q. Okay. The UV questions being the  15 breakdown issues?  16 A. Yes.  17 MR. KRESSIN: We would ask that be  18 made the next exhibit.  19 BY MR. KRESSIN: That one is not numbered, is  20 it?  21 A. It's got STI--  22 Q. No, I mean does it have an exhibit  23 number on it?  24 A. No.  25 MR. KRESSIN: Exhibit 895.</p>
<p style="text-align: right;">Page 178</p> <p>1 A. No.  2 Q. What's that an item agreement on?  3 A. In 1997 they bought the 2101.  4 Q. Then it goes on to say, she likes the  5 2104/2101 better. Is that one piece more  6 commercial? What does that mean?  7 A. That was making a note to myself that  8 she preferred the one-piece picnic table over the  9 2150. There was a problem in her mind that  10 because she was selling picnic tables to  11 potentially commercial customers that having to  12 detachable benches would be a problem in that they  13 could be stolen and they--it would be harder to  14 lock up a table with a simple chain if parts  15 could be taken off of it.  16 Q. Okay. Was she still concerned about  17 the fact that detaching the tables--I'm sorry,  18 detaching the bench, benches from the table would  19 make it a utility table?  20 A. That was part of it as well.  21 Q. Okay. And there is a note down here.  22 It says, "Vince will call Deanne on Tuesday?"  23 A. Yes.  24 Q. What, what was that about?  25 MR. SEARS: What's the note about?</p>	<p style="text-align: right;">Page 180</p> <p>1 Exhibit-895 marked  2 I am going to show you what's been  3 previously marked as Exhibit 887. Is that what  4 it is? Is that Exhibit 887?  5 A. Yes.  6 Q. Have you ever seen this document  7 before?  8 A. I believe I saw it yesterday.  9 Q. Is that the first time you remember  10 seeing it?  11 A. Yes.  12 Q. Okay. Now, in this document there is a  13 reference to a new addition to our line, an  14 outdoor--I'm sorry--an indoor-outdoor banquet  15 table. Do you see that reference?  16 A. Yes, I see it.  17 Q. Do you know what that's referring to?  18 A. I do not.  19 Q. Would that have been a table like  20 Exhibit 870?  21 MR. SEARS: Objection. Lacks  22 foundation. Calls for speculation.  23 THE WITNESS: I don't know.  24 BY MR. KRESSIN:  25 Q. Do you know if there was a banquet</p>



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Deposition of Mary Jackson, 2/3/2004

<p style="text-align: right;">Page 181</p> <p>1 table available or being discussed in October of 2 1997? 3 A. Not that I was aware of. 4 Q. Did you tell me that you did or did not 5 have any dealings with the Eagle Hardware account? 6 A. I only had, I helped out with one 7 meeting on the initial presentation of picnic 8 tables and that was all I ever did with Eagle. 9 Q. Okay. Do you remember when that was? 10 A. No. I am—I would have to guess and 11 say it was in the 1996 range. 12 Q. Okay. It was probably before the date 13 referenced in this document? 14 A. Yes, it was before this. 15 MR. KRESSIN: I ask that 887 be made 16 an exhibit. 17 BY MR. KRESSIN: 18 I think you indicated earlier that, 19 that what's been referred to as Exhibit 870, the 20 blue table that was in use in the, you know, 21 underneath the fax machine or copy machine in your 22 offices— 23 MR. SEARS: Objection. 24 Mischaracterizes her prior—previous testimony. 25 BY MR. KRESSIN:</p>	<p style="text-align: right;">Page 183</p> <p>1 designated as Exhibit 870? 2 MR. SEARS: Objection. Asked and 3 answered. 4 THE WITNESS: I don't recall when it 5 came in. 6 BY MR. KRESSIN: 7 Q. Okay. When you—when Frontier 8 Northwest received it were the offices still in 9 Mr. Wohlwend's house? 10 A. I believe so because I remember seeing 11 the table when it was still in that storage unit 12 that we had 13 Q. Okay. 14 A. —over at his house. 15 Q. Was the table delivered to his house 16 from Lifetime? 17 A. Yes. 18 Q. Okay. And what was done with the 19 table? I mean, did it come wrapped? 20 A. Yes, it would have been wrapped in 21 either cardboard or in a wood crate. 22 Q. Okay. What—after it was received at 23 Mr. Wohlwend's office—or house what, what, what 24 happened to it? What was done? 25 A. It was put into storage in the off-site</p>
<p style="text-align: right;">Page 182</p> <p>1 Q. Is that correct? 2 A. It was a fax machine. 3 MR. SEARS: It was a fax machine. 4 MR. KRESSIN: Oh, it was a fax machine. 5 I'm sorry. 6 BY MR. KRESSIN: 7 Q. The, the table itself you said came 8 from storage? 9 A. It was in storage and we started using 10 it in the office when we moved to Des Moines. 11 Q. Okay. Was that table in use in Mr. 12 Wohlwend's home when, when you all had your 13 offices at his home? 14 A. No. There was no room for it. 15 Q. Okay. What kind of furniture did you 16 use in his, in his home? 17 A. We had wood desks and office chairs, 18 and that was about all we could fit in there. 19 Q. Okay. You had indicated, I think, that 20 you went to work for, for Frontier Northwest in 21 January of 1995? 22 A. '94. 23 Q. '94, okay. 24 And when, when did, when did Frontier 25 Northwest receive the table that has been</p>	<p style="text-align: right;">Page 184</p> <p>1 storage unit. 2 Q. Okay. Was it opened before it was put 3 in storage? 4 A. Yes. 5 Q. Do you know who was there when it was 6 opened? 7 A. It would have been Steve Shin and I. 8 Q. Did you set it up? 9 A. Yes, we set it up and looked at it. 10 Q. Okay. Did you, did you make any use of 11 it to see if it would work? 12 A. No. 13 Q. Okay. Did you immediately just put it 14 in a car and take it over to storage? 15 A. No, I, I kind of recall that it was in 16 our office for a very short period of time. When 17 it arrived I made the call to Klaus Lambert to 18 ask him if we could come up and show it to him 19 and when he showed no interest then we took it up 20 to the storage facility so it be would out of the 21 way. 22 Q. Did you call anybody else? 23 A. No. I called Vince to let him know the 24 bad news. 25 Q. I meant did you call any other buyers.</p>



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<p style="text-align: right;">Page 185</p> <p>1 A. No.</p> <p>2 Q. And do you recall the time frame that,</p> <p>3 that it would have been between the time you</p> <p>4 received the table and the time that you called</p> <p>5 Klaus Lambert?</p> <p>6 A. It would have been no more than a</p> <p>7 couple days.</p> <p>8 Q. Do you know if there are any shipping</p> <p>9 documents for that table?</p> <p>10 A. If there were, they would have been</p> <p>11 produced with all the other documents.</p> <p>12 Q. Do you have any personal knowledge as</p> <p>13 to where they are?</p> <p>14 A. No, I don't recall seeing any.</p> <p>15 Q. Okay. As a, as a Costco buyer were you</p> <p>16 ever shown products by Lifetime?</p> <p>17 A. Yeah.</p> <p>18 Q. Yeah, for purchase. In other words,</p> <p>19 when you were either assistant buyer or buyer were</p> <p>20 you shown products that were, you know, that Cos-</p> <p>21 that Lifetime was, through Frontier Northwest was</p> <p>22 trying to sell to Costco to sell to its</p> <p>23 customers?</p> <p>24 A. As an assistant buyer I was shown</p> <p>25 basketball hoops.</p>	<p style="text-align: right;">Page 187</p> <p>1 customers that we didn't, we didn't care if Fred</p> <p>2 Meyer saw it or GI Joe's.</p> <p>3 Q. Okay. Was there any--you said you</p> <p>4 asked that they not do it. Do you think--or do</p> <p>5 you have an opinion as to whether by asking they</p> <p>6 were bound not to show it to someone else?</p> <p>7 MR. SEARS: Objection.</p> <p>8 Mischaracterizes her testimony.</p> <p>9 THE WITNESS: As far as a buyer at</p> <p>10 Costco goes, if we found out one way or another</p> <p>11 that it was shown elsewhere when we were still</p> <p>12 interested in it, then we wouldn't do business</p> <p>13 with that vendor any more after that point.</p> <p>14 BY MR. KRESSIN:</p> <p>15 Q. Okay. Now, specifically when you were,</p> <p>16 you were being shown prototypes and so forth,</p> <p>17 who--what discussions would you have with the</p> <p>18 sales representative or the Lifetime</p> <p>19 representative with regard to that product?</p> <p>20 A. I discuss what parts of the prototype I</p> <p>21 liked or didn't like, what colors or designs I</p> <p>22 liked or didn't like.</p> <p>23 Q. Okay. And with regard to, you know,</p> <p>24 either keeping it confidential or not, or keeping</p> <p>25 it confidential, what discussions would you have?</p>
<p style="text-align: right;">Page 186</p> <p>1 Q. Okay.</p> <p>2 A. And trampolines.</p> <p>3 Q. Okay. Were you ever told that any of</p> <p>4 these, that any of the products that you were</p> <p>5 being shown were being shown to you in confidence?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. What products?</p> <p>8 A. Prototype basketball systems. And we</p> <p>9 had at least two prototype trampolines that, that</p> <p>10 were shown to me and my staff.</p> <p>11 Q. Okay. And was there any commitment,</p> <p>12 was there any agreement to, to maintain any</p> <p>13 confidentiality?</p> <p>14 A. There were--we verbally agreed that it</p> <p>15 would be held in confidence what we were seeing.</p> <p>16 Q. Okay. How long?</p> <p>17 A. Until we either purchased the item or</p> <p>18 somebody else purchased it and it was out for</p> <p>19 sale in the marketplace.</p> <p>20 Q. Okay. Was there any discussion about</p> <p>21 showing any of those items to other potential</p> <p>22 buyers?</p> <p>23 A. If, if Costco had interest in the item,</p> <p>24 then we would ask that they not show the item to</p> <p>25 our biggest competitor, Sam's, but other retail</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Telling the vendor, asking them to not</p> <p>2 sell this item to Sam's or BJ's until I got back</p> <p>3 to them on whether or not I would be able to buy</p> <p>4 it. Asking if they've shown it to any other</p> <p>5 wholesale clubs at that point.</p> <p>6 Q. Okay. Would they tell you if they had?</p> <p>7 A. They usually did and I believed them.</p> <p>8 Q. Were you ever--was there ever any</p> <p>9 discussion asking Costco not to, to show it to,</p> <p>10 show anything they had seen to, to other people?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Tell me what, tell me what was</p> <p>13 asked of you in that regard.</p> <p>14 A. We were normally told that these were</p> <p>15 prototype products.</p> <p>16 Q. Who? Who?</p> <p>17 A. Whoever the vendor was that was coming</p> <p>18 in to see me, whether that be Lifetime--</p> <p>19 Q. Yeah. I'm focusing on Lifetime and its</p> <p>20 sales representatives.</p> <p>21 A. Vince Rhoton, I had meetings with and</p> <p>22 Kevin Bingham, at least once. And in those</p> <p>23 discussions they would ask that I keep all of</p> <p>24 this in confidence, the, the designs, the colors,</p> <p>25 the, whatever was the new, new about the product</p>



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<p style="text-align: right;">Page 189</p> <p>1 they want me to keep that in confidence because</p> <p>2 they were developing it for me so it was not to</p> <p>3 my advantage to go tell other people about it</p> <p>4 because it was going to be for me specially.</p> <p>5 Q. Okay. Who was present when, when those</p> <p>6 things were told to you?</p> <p>7 MR. SEARS: Are you asking about any</p> <p>8 specific instance?</p> <p>9 MR. KRESSIN: Well, I was talking about</p> <p>10 the instances where Vince Rhoton had told her that</p> <p>11 as--when she was a buyer for Costco.</p> <p>12 BY MR. KRESSIN:</p> <p>13 Q. Did you understand that was my</p> <p>14 question?</p> <p>15 A. Yeah.</p> <p>16 Q. Okay.</p> <p>17 A. Steve Wohlwend would have been there</p> <p>18 and my boss, Carolyn Sakai, would have been there</p> <p>19 at those same discussions.</p> <p>20 Q. Okay. As a buyer were you ever asked</p> <p>21 to sign any kind of confidentiality agreement by</p> <p>22 Lifetime or its sales representatives?</p> <p>23 A. No.</p> <p>24 Q. Did, did Costco have a policy about</p> <p>25 signing such agreements if asked?</p>	<p style="text-align: right;">Page 191</p> <p>1 Costco buyers asked to sign any kind of</p> <p>2 confidentiality agreement by Lifetime or its sales</p> <p>3 representatives?</p> <p>4 A. No.</p> <p>5 MR. SEARS: Objection. Lacks</p> <p>6 foundation as to part of your question.</p> <p>7 BY MR. KRESSIN:</p> <p>8 Q. Was the confidentiality, to the extent</p> <p>9 it existed, the same kind of confidentiality that</p> <p>10 existed when you were a Costco buyer in the</p> <p>11 sporting goods?</p> <p>12 A. I really don't know what it's like</p> <p>13 today for the buyers, if it's changed.</p> <p>14 Q. Well, I was referring to back when you</p> <p>15 were working with Costco as a sales</p> <p>16 representative, that time period. I thought you</p> <p>17 told me earlier that when you, the first six</p> <p>18 months you went to Frontier Northwest you were the</p> <p>19 secretarial, after that you started dealing with</p> <p>20 Costco as a buyer--I'm sorry, as a sales</p> <p>21 representative; but because of your work load and</p> <p>22 whatnot Dan Stivers essentially took over the</p> <p>23 utility table marketing, if you will, and that</p> <p>24 you, you know, you had less to do with that once</p> <p>25 Dan Stivers took over those responsibilities.</p>
<p style="text-align: right;">Page 190</p> <p>1 A. I know in some departments they did</p> <p>2 have to sign agreements like that, especially in</p> <p>3 large major appliances and electronics but in, in</p> <p>4 the sporting good department it was more of a</p> <p>5 good old boy, you know, handshake is a, is as</p> <p>6 good as your word type of a mentality so we</p> <p>7 really didn't--there was no corporate philosophy</p> <p>8 about it.</p> <p>9 Q. Okay. Now, when, you know, when you</p> <p>10 basically were a sales representative with</p> <p>11 Frontier did you attend any meetings where there</p> <p>12 was any discussion about keeping utility tables</p> <p>13 confidential in any way?</p> <p>14 A. No.</p> <p>15 Q. Are you aware of any request by</p> <p>16 Lifetime or its sales representatives of Costco or</p> <p>17 Costco buyers to keep anything about any utility</p> <p>18 table designs confidential?</p> <p>19 A. We have had discussions about making</p> <p>20 new designs in the tables and those conversations</p> <p>21 have all been kept very confidential.</p> <p>22 Q. Now, who are those with?</p> <p>23 A. With Costco buyers and in our</p> <p>24 brainstorming session that we had with Lifetime.</p> <p>25 Q. Was there--at any time was, were the</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Yes.</p> <p>2 Q. Now, is that not accurate?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. So what I was referring to is</p> <p>5 that during the period of time that you were</p> <p>6 involved, you know, in the sale of your picnic</p> <p>7 table, utility table, that period of time, was</p> <p>8 the, the confidentiality, if you will, to the</p> <p>9 extent that it existed, the same kind of</p> <p>10 arrangement that, that you had when you were a</p> <p>11 Costco buyer in the sports--or sporting goods</p> <p>12 area?</p> <p>13 MR. SEARS: Objection. Compound.</p> <p>14 THE WITNESS: There were some written</p> <p>15 documents that had to be signed in order to see</p> <p>16 or keep in confidence information that they were</p> <p>17 seeing. Everything has been handshakes and verbal</p> <p>18 agreements back and forth during that time.</p> <p>19 MR. KRESSIN: Okay. Why don't we take</p> <p>20 a break and see if we can--I know she'll be</p> <p>21 unhappy to hear this--and if we can see if we can</p> <p>22 wrap it up. I know she has enjoyed this</p> <p>23 experience.</p> <p>24 (Recess taken.)</p> <p>25 BY MR. KRESSIN:</p>



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<p style="text-align: right;">Page 193</p> <p>1 Q. Let me show you what's been marked as 2 Exhibit 888. 3 MR. SEARS: I'll just note for the 4 record that we've agreed to the use of this 5 exhibit in this deposition subject to the same 6 constraints as in yesterday's deposition of Mr. 7 Wohlwend. 8 BY MR. KRESSIN: 9 Q. Have you seen this declaration? 10 A. Yes. I saw it yesterday. 11 Q. Did you see the attachment to the 12 declaration? 13 A. Yes, I saw this yesterday. 14 Q. Who showed it to you? 15 MR. SEARS: Objection. Calls for 16 attorney-client communications. I instruct you 17 not to answer. 18 BY MR. KRESSIN: 19 Q. Did you observe it when you were in the 20 offices of Workman Nydegger? 21 A. Yes. 22 (Discussion off the record.) 23 Q. Did you have an opportunity to read 24 this declaration of Mr. Long? 25 A. I read just a couple points yesterday.</p>	<p style="text-align: right;">Page 195</p> <p>1 Lifetime's new table? 2 MR. SEARS: Objection. Vague. 3 THE WITNESS: From the time frame that 4 he is talking about? 5 BY MR. KRESSIN: 6 Q. That's right. Yes. 7 A. I am not aware of any agreement at that 8 point. 9 Q. Okay. Do you know if Costco agreed to 10 purchase any of these tables that are depicted in 11 this image that's attached to this declaration? 12 A. I'm not aware of any agreement there. 13 Q. Okay. 14 MR. SEARS: Would you read back that 15 last question and answer. 16 (Record read.) 17 BY MR. KRESSIN: 18 Q. Now, over on paragraph 8--I'm assuming 19 that you didn't attend a meeting of Mr. Mower and 20 Mr. Curtis and Mr. Long. 21 A. No, I did not. 22 MR. SEARS: Objection. Assumes facts 23 not in evidence. 24 MR. KRESSIN: You are right, I did ask 25 her--I did assume that she didn't attend that</p>
<p style="text-align: right;">Page 194</p> <p>1 Q. Okay. One of those points was at point 2 number 7? 3 A. I, I can read it right now. I didn't 4 read it yesterday. 5 Q. Okay. 6 A. Okay. 7 Q. If you need to read the whole thing, go 8 ahead. I was just going to ask you about 9 paragraph 7 but you certainly--I am not limiting 10 you to only reading paragraph 7. 11 A. Okay. 12 Q. Okay. Now, looking at paragraph 7, it 13 says, "In an attempt to interest Sam's Club in 14 purchasing the table Mr. Curtis and Mr. Mower told 15 me, Michael Long, that Costco had already agreed 16 to test market Lifetime's new table." 17 Now, the, the table I think that's 18 referred to is this table that's, that the image 19 is attached, this color image. 20 First of all, have you ever seen that 21 table? 22 A. No. The legs look different than 23 anything I've seen with this color top. 24 Q. Okay. Now, are you aware of, first of 25 all, whether Costco agreed to test market</p>	<p style="text-align: right;">Page 196</p> <p>1 meeting. 2 MR. SEARS: No, you assumed that that 3 meeting took place. 4 BY MR. KRESSIN: 5 Q. Did you 6 A. That's true. 7 Q. Well, if it did or if it didn't, you 8 didn't attend it? 9 A. Correct. 10 Q. Now, because you didn't attend that 11 meeting or the meeting that might have occurred or 12 might not have occurred, do you have any knowledge 13 of what would have occurred at that meeting? 14 A. No. 15 MR. SEARS: Assumes facts not in 16 evidence. 17 BY MR. KRESSIN: 18 Q. That's a long day, isn't it? 19 A. Yeah. 20 MR. KRESSIN: I think that's all I 21 have.. 22 MR. SEARS: I just have a couple of 23 follow-up questions. 24 EXAMINATION 25 BY-MR. SEARS:</p>

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<p style="text-align: right;">Page 197</p> <p>1 Q. Earlier today in connection with the 2 blue table that's been marked as Exhibit 870 Mr. 3 Kressin asked you if Lifetime communicated 4 anything special to you about the sample and about 5 whether, how the sample should be treated. 6 Just following up on those questions, 7 did you have an understanding that samples 8 received from Lifetime were to be held in 9 confidence? 10 MR. KRESSIN: Object to the form of the 11 question. Assumes facts not in evidence. 12 THE WITNESS: That was part of my job, 13 was to keep those things in confidence, any kind 14 of prototype. 15 BY MR. SEARS: 16 Q. So there didn't need to be a separate 17 discussion of each prototype? 18 A. No. 19 MR. SEARS: Counsel, the map of the 20 Frontier Northwest office. Do you have that 21 exhibit? 22 MR. KRESSIN: You want the one she 23 marked or the other one, because we have got two? 24 MR. SEARS: Right. Let's go with the 25 one that she marked.</p>	<p style="text-align: right;">Page 199</p> <p>1 office is not a public area? 2 MR. KRESSIN: Object to the triple 3 compound question, leading and the form. 4 THE WITNESS: The rest of the office is 5 more—we would show people to the back to see a 6 sample, they would be escorted to the back or 7 allowed to maybe use the restrooms if they needed 8 to, but it would certain—nothing beyond the 9 conference room is designated as public. 10 BY MR. SEARS: 11 Q. Or considered by you to be public? 12 A. Correct. 13 Q. Okay. Now, earlier Mr. Kressin asked 14 you a hypothetical question about an item 15 agreement and he asked you if an item agreement 16 were filled out, could it be accepted and that 17 you indicated that it could be. I just wonder if 18 you could explain what you meant by that. 19 A. If—no, if the buyer doesn't need to 20 make any changes to what the vendors filled out 21 and signed on that item agreement, then it could 22 be accepted. In all my years that I've been 23 working with Costco or worked at Costco typically 24 there's three or four drafts that are done of an 25 item agreement before the final is approved and</p>
<p style="text-align: right;">Page 198</p> <p>1 THE WITNESS: There it is. 2 BY MR. SEARS: 3 Q. So before you now is Exhibit 880-A that 4 was discussed earlier as a rough map of Frontier 5 Northwest's offices. Do you have an understanding 6 of what the, what you would consider to be the 7 public area of Frontier Northwest's office? 8 MR. KRESSIN: Object to the form of the 9 question. 10 THE WITNESS: The way we have the 11 office set up there's a phone out in front of the 12 conference room and some chairs and a place where 13 you can mail some things and that is just right 14 here in front of the entry area. 15 BY MR. KRESSIN: 16 Q. Between the entry and the conference 17 room? 18 A. Right, and not into the private 19 offices. Typically when people come in they will 20 sit and wait for someone to get out of their 21 office to meet them in the conference room. 22 Q. So the area between the entryway and 23 the conference room are—is a public area. The 24 conference room is an area where guests can 25 routinely be expected to visit. The rest of the</p>	<p style="text-align: right;">Page 200</p> <p>1 signed by everybody. 2 Q. And the acceptance, the customer's 3 acceptance is not—creates some obligations unless 4 the vendor has previously signed the item 5 agreement? Is that correct? 6 A. That's correct. 7 MR. KRESSIN: Object to form. Object 8 to leading. 9 BY MR. SEARS: 10 Q. Now, you were asked more recently if 11 you recalled any discussions of confidentiality 12 between Costco and Lifetime in connection with 13 utility tables. It's my understanding from your 14 earlier testimony today that of the employees at 15 Frontier Northwest, Mr. Stivers has been 16 principally responsible for dealing with utility 17 tables. Is that correct? 18 A. Yes. 19 MR. KRESSIN: Object to the form. 20 BY MR. SEARS: 21 Q. All right. So would it also be correct 22 that as the company's representative you would 23 defer on the issue of whether confidentiality has 24 been discussed in connection with utility tables 25 to Mr. Stivers?</p>



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<p style="text-align: right;">Page 201</p> <p>1 A. Yes.</p> <p>2 MR. KRESSIN: Object to form. Object</p> <p>3 to leading.</p> <p>4 MR. SEARS: All right. And if we could</p> <p>5 return to Exhibit 885. Counsel, you have that?</p> <p>6 MR. KRESSIN: I don't know. Was that</p> <p>7 Wohlwend?</p> <p>8 MR. SEARS: Yes.</p> <p>9 BY MR. SEARS:</p> <p>10 Q. All right. So, Ms. Jackson, you have</p> <p>11 before you again Exhibit 885 and if I could refer</p> <p>12 you to the second and third bullet points under</p> <p>13 the heading DuraTable two-in-one.</p> <p>14 A. Okay.</p> <p>15 Q. Number sign 2150. If you could just</p> <p>16 take a minute to look those over again.</p> <p>17 A. Okay.</p> <p>18 Q. Now, it says here that Deanne was</p> <p>19 thrilled with the new lower costs.</p> <p>20 And then the next bullet point</p> <p>21 indicates, they really liked the table and will</p> <p>22 start the freight approval process immediately.</p> <p>23 I understand from that that a, the</p> <p>24 price term for the 2150 had been agreed to. Is</p> <p>25 that correct?</p>	<p style="text-align: right;">Page 203</p> <p>1 Q. Ms. Jackson, I think you said that you</p> <p>2 were there when you all moved in--or when</p> <p>3 northwest--Frontier Northwest moved into their new</p> <p>4 offices in Des Moines. Is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And is that when Frontier Northwest</p> <p>7 started using the, this blue table that Exhibit</p> <p>8 870 is as a support for its fax machine?</p> <p>9 A. Within a week of moving in.</p> <p>10 Q. Okay.</p> <p>11 A. It took us about a week to get</p> <p>12 organized.</p> <p>13 Q. And has it been in that room supporting</p> <p>14 that fax machine until just a few weeks ago?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So that would have been, what,</p> <p>17 nine years?</p> <p>18 A. Yeah, close to.</p> <p>19 Q. Close to nine years?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Okay. Would you please tell me in that</p> <p>22 nine-year period everyone who has been in your</p> <p>23 offices who is not an employee that's walked past</p> <p>24 and seen that table?</p> <p>25 A. I can't even speculate as to who may</p>
<p style="text-align: right;">Page 202</p> <p>1 MR. KRESSIN: Object to form of the</p> <p>2 question. Your understanding is immaterial.</p> <p>3 THE WITNESS: Deanne had accepted our</p> <p>4 prices that we provided on this date.</p> <p>5 BY MR. SEARS:</p> <p>6 Q. Great. But the freight approval</p> <p>7 process was never completed?</p> <p>8 MR. KRESSIN: Object to the form of the</p> <p>9 question. Leading.</p> <p>10 THE WITNESS: Ellen Haertl started</p> <p>11 working on the freight approval process but it</p> <p>12 never, it never was completed because the buyer</p> <p>13 wasn't happy with the results from that freight</p> <p>14 analysis.</p> <p>15 BY MR. SEARS:</p> <p>16 Q. All right. And so the agreement on the</p> <p>17 price alone was insufficient to, to close the</p> <p>18 deal?</p> <p>19 A. Yes.</p> <p>20 MR. KRESSIN: Object to the form.</p> <p>21 MR. SEARS: All right. That's all I</p> <p>22 have.</p> <p>23 MR. KRESSIN: Okay.</p> <p>24 FURTHER-EXAMINATION</p> <p>25 BY-MR.KRESSIN:</p>	<p style="text-align: right;">Page 204</p> <p>1 have even seen the table. The table was very</p> <p>2 much covered up.</p> <p>3 Q. Okay.</p> <p>4 A. And the only person that I can recall</p> <p>5 that ever saw the table as being a blue table was</p> <p>6 Vince Rhoton because he saw the edge and</p> <p>7 recognized it.</p> <p>8 Q. When was that?</p> <p>9 A. '99.</p> <p>10 Q. 1999?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Okay. Did you--or did Frontier</p> <p>13 Northwest keep a log of everybody who was in</p> <p>14 their offices that might have gone--</p> <p>15 A. No.</p> <p>16 Q. --past the door?</p> <p>17 A. No, we have no log.</p> <p>18 Q. Do we keep a log as to everyone that</p> <p>19 went to the bathroom in the place?</p> <p>20 A. No, we do not.</p> <p>21 Q. Do we blindfold people before we take</p> <p>22 them past the office supply room?</p> <p>23 A. No, they are not blindfolded.</p> <p>24 Q. Okay. Are they asked to sign any kind</p> <p>25 of confidentiality agreement as to anything they</p>



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<p style="text-align: right;">Page 205</p> <p>1 see in Frontier Northwest's offices?</p> <p>2 A. No.</p> <p>3 Q. Can you tell me all of the employees</p> <p>4 who have worked in there the last nine years?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Can you tell me if any of them</p> <p>7 signed any confidentiality agreement as to any</p> <p>8 furniture that was being used in the Frontier</p> <p>9 Northwest offices?</p> <p>10 A. Not having to do with office furniture,</p> <p>11 no interest.</p> <p>12 Q. Okay. Well, wasn't that being used as</p> <p>13 office furniture, Exhibit 870?</p> <p>14 A. Yes, it was being used as office</p> <p>15 furniture.</p> <p>16 Q. Okay. Now, you indicated that, that</p> <p>17 your handling of these, these samples, that you</p> <p>18 just knew that it was done confident—or that</p> <p>19 there was some confidentiality to the handling of</p> <p>20 these samples?</p> <p>21 A. Yes, anything that was a prototype was</p> <p>22 to be held in confidence.</p> <p>23 Q. Okay. Now, would you explain to me</p> <p>24 when you were told that?</p> <p>25 A. When I was hired.</p>	<p style="text-align: right;">Page 207</p> <p>1 A. I cannot recall a specific date.</p> <p>2 Q. Who told you?</p> <p>3 A. It would have been Vince Rhoton.</p> <p>4 Q. It would have been. Do you have any</p> <p>5 independent recollection of Vince Rhoton ever told</p> <p>6 you that about that blue 870, Exhibit 870 utility</p> <p>7 table?</p> <p>8 A. No, not specifically that table.</p> <p>9 Q. Did anybody hear anybody tell you to</p> <p>10 keep that confidential?</p> <p>11 A. No.</p> <p>12 Q. Isn't it a fact that Lifetime has no</p> <p>13 agreement with you to keep that, that Lifetime</p> <p>14 table, that Exhibit 870, confidential?</p> <p>15 MR. SEARS: Objection. Argumentative.</p> <p>16 Harassing. Calls for a legal conclusion.</p> <p>17 BY MR KRESSIN:</p> <p>18 Q. Okay. Go ahead and answer.</p> <p>19 A. Every single prototype they send to me</p> <p>20 is to be kept in confidence.</p> <p>21 Q. That's what I'm asking. I understood</p> <p>22 you to say that you were not—that you were told</p> <p>23 each time that an exhibit—or that a sample was</p> <p>24 sent to you that you were to keep it</p> <p>25 confidential. Is that not what you just said?</p>
<p style="text-align: right;">Page 206</p> <p>1 Q. And who told you?</p> <p>2 A. Steve Wohlwend.</p> <p>3 Q. And what day did he tell you that?</p> <p>4 A. January 21, 1994.</p> <p>5 Q. Okay. Who else was present that heard</p> <p>6 that discussion?</p> <p>7 A. Shin Tanaka.</p> <p>8 Q. Anyone else?</p> <p>9 A. No.</p> <p>10 Q. Did you sign an agreement to keep</p> <p>11 everything about samples from Lifetime</p> <p>12 confidential?</p> <p>13 A. No, there is no signed agreement.</p> <p>14 Q. Did anyone at Lifetime tell you that</p> <p>15 they wanted you to maintain confidential every</p> <p>16 sample that they sent to you?</p> <p>17 A. In spoken form, yes.</p> <p>18 Q. When?</p> <p>19 A. Every time they sent us a sample.</p> <p>20 Q. And when, when would the sample, say</p> <p>21 this 8—Exhibit 870, when was that sent to you?</p> <p>22 A. I don't recall which day it was sent to</p> <p>23 us.</p> <p>24 Q. When were you told to keep that sample</p> <p>25 confidential?</p>	<p style="text-align: right;">Page 208</p> <p>1 A. Every time I am, I am sent a sample—</p> <p>2 Q. Yeah.</p> <p>3 A. —I need to keep it in confidence.</p> <p>4 Q. And they tell you that every time.</p> <p>5 A. It's part of my job.</p> <p>6 Q. Do they tell you that every time?</p> <p>7 A. They don't need to tell me that every</p> <p>8 time because it's part of my job.</p> <p>9 Q. Okay. What was my question?</p> <p>10 A. You asked me if I knew a specific date</p> <p>11 that they told it to me.</p> <p>12 Q. No, that's not my question. I said do</p> <p>13 they tell you that every time.</p> <p>14 MR. SEARS: Counsel. Don't treat this</p> <p>15 witness—</p> <p>16 MR. KRESSIN: I am asking questions.</p> <p>17 MR. SEARS: Don't treat this witness—</p> <p>18 MR. KRESSIN: I am not asking—I am</p> <p>19 going to ask my questions. Now, she has come in</p> <p>20 here and made some statements based on your</p> <p>21 ridiculous leading of her questioning and I am</p> <p>22 going to ask the question because I have a right</p> <p>23 to follow up what, with what you've asked her.</p> <p>24 MR. SEARS: You don't have a right to</p> <p>25 badger.</p>



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1 MR. KRESSIN: I am not badgering.  
2 MR. SEARS: You don't have a right to  
3 harass.  
4 BY MR. KRESSIN:  
5 Q. Am I badgering you?  
6 A. Yes.  
7 Q. Okay. What did you find badgering  
8 about my question?  
9 A. You're questioning what my job is. My  
10 job at Frontier Northwest is to keep all samples  
11 that are prototypes under confidence. Whether or  
12 not I am told specifically with every prototype  
13 piece of equipment--  
14 Q. All I want--okay. Excuse me. I didn't  
15 mean to interrupt you. Are you through?  
16 A. Yes.  
17 Q. All I want to know is where that  
18 information came from. That's all.  
19 MR. SEARS: Asked and answered numerous  
20 times.  
21 BY MR. KRESSIN:  
22 Q. And all I understood was that  
23 originally you said that each time a sample was  
24 sent to you by Lifetime you were told to keep it  
25 confidential. Is that not right?

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1 A. It didn't need to be said every time  
2 because it's part of my job description.  
3 Q. And you don't have anything in writing  
4 with Lifetime that says you'll keep this stuff  
5 confidential, right?  
6 A. Nothing in writing. That's all verbal  
7 agreements.  
8 Q. Okay. And what, what--can you tell me  
9 specifically, then, when you were told on any  
10 sample to keep it confidential? Any time.  
11 A. Every time that I'm sent a sample  
12 that's a prototype.  
13 Q. Okay. Give me a date and time.  
14 A. I don't have that information.  
15 MR. KRESSIN: Okay. I think that's all  
16 we have.  
17 MR. SEARS: All right. This deposition  
18 is closed.  
19 MR. KRESSIN: This deposition is  
20 continued until we get a couple things worked out.  
21 MR. SEARS: Closed. You can have your  
22 view of it--  
23 MR. KRESSIN: I have my view of it,  
24 that's right.  
25 (Deposition concluded at 3:09 p.m.)

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